TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 747

PERRY HANNAH, ALBERT T. LAY, JAMES MORGAN, AND WILLIAM MORGAN, CLAIMANTS OF THE PROPELLER ALLEGHENY, &c., AND HARRISON LUDINGTON AND CHARLES J. KERSHAW, STIPULATORS, APPELLANTS,

vs.

SARAH S. WOLVERTON AND JAMES E. PITTMAN, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED DECEMBER 11, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 357.

PERRY HANNAH, ALBERT T. LAY, JAMES MORGAN, AND WILLIAM MORGAN, CLAIMANTS OF THE PROPELLER ALLEGHENY, &c., AND HARRISON LUDINGTON AND CHARLES J. KERSHAW, STIPULATORS, APPELLANTS,

vs.

SARAH S. WOLVERTON AND JAMES E. PITTMAN, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of September, A. D. 1868.

Present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit; Cassius Fairchild, marshal; Edward Kurtz, clerk.

Among other, the following proceedings were had, to wit:

SARAH S. WOLVERTON and JAMES E. PITTMAN, libellants,
vs.
THE PROPELLER ALLEGHENY, HER BOILER, &c.—Perry Hannah, Albert T. Lay, James Morgan, and William Morgan, claimants, and Harrison Ludington and Charles J. Kershaw, stipulators. } Appeal in admiralty.

Be it remembered that heretofore, to wit, on the ninth day of April, A. D. 1866, a certified copy of record on appeal from
2 the district court of the United States for the district of Wisconsin was received from the clerk of said court and filed in the clerk's office of this court as follows, to wit:

3 District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the eleventh day) of September, A. D. 1865.

Present, the Honorable Andrew G. Miller, judge of said court, presiding; Darius C. Jackson, marshal; John M. Miller, clerk.

Among other, the following proceedings were had, to wit:

SARAH S. WOLVERTON and JAMES E. PITTMAN
vs.
THE PROPELLER ALLEGHENY, and PERRY Hannah, Albert T. Lay, James Morgan, and William Morgan, claimants, and Harrison Ludington and Charles J. Kershaw, stipulators. } In admiralty.

Be it remembered that heretofore, to wit, on the fourth day of May, A. D. 1864, came the above-named libellants, by their proctors, Messrs. Emmons, Van Dyke & Hamilton, and presented to the

court their libel against the propeller Allegheny, her boiler, engine, machinery, boats, tackle, apparel, and furniture as follows:

Libel.

To the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, in admiralty:

The libel and complaint of Sarah S. Wolverton and James E. Pittman, of the city of Detroit, in the State of Michigan, owners of the schooner Henry C. Winslow, her tackle, apparel, and furniture, exhibit this their libel against the steam propeller Allegheny,
4 (whereof ——— ——— is, or lately was, master,) now lying in the port of Milwaukee, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her boiler, engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein, in a cause of collision, civil and maritime. And thereupon these libellants allege and articulately propound as follows, to wit:

First. That the schooner Henry C. Winslow is a vessel of more than twenty tons burthen, to wit, of the burthen of three hundred and sixty-two tons or thereabouts, and at the time when the cause of action, hereinafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States of the United States upon the lakes and navigable waters connecting the said lakes.

Second. That the propeller Allegheny is a vessel of more than twenty tons burthen, to wit, of the burthen of five hundred tons, and at the time when the cause of action, hereinafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation be-
5 tween ports and places in different States of the United States upon the lakes and navigable waters connecting the said lakes.

Second. That on or about the fourth day of May, A. D. 1864, the aforesaid schooner, being tight, staunch, and strong, and well manned and provided, started on her voyage from the dock of Layton and Plankinton, in the port of Milwaukee in said district, with a valuable cargo of nineteen thousand four hundred and fifty bushels of oats and two hundred barrels of mess pork, on a voyage to the port of Buffalo, in the State of New York; that the said schooner started from said dock on her voyage aforesaid, in tow of the steam-tug W. K. Muir, (by which tug she was to be towed out of the harbor of Milwaukee aforesaid into the bay,) at about seven o'clock in the morning, and reached the harbor piers shortly after leaving said dock in tow of said steam-tug. The captain of said tug seeing the propeller Allegheny in the harbor piers, signalled the said propeller by one whistle to keep the starboard side, which signal is the usual signal in like cases; that thereupon it was the duty of the said propeller to reply by a like signal and keep to the starboard; the said propeller

failed to take any notice of said signal or to take any steps to avoid a collision with said schooner. The said tug repeated the
6 signal aforesaid, the said propeller being then distant about ten rods. The tug was then well over on the south side of the harbor piers, and the schooner in tow of and in track of said tug, being starboard of said tug, there being at least one hundred and fifty feet from the said schooner's bow to the north pier of said harbor, and abundance of room for the said propeller to have passed clear of the said schooner. The said propeller kept straight up the harbor on to the said schooner without perceptibly slacking her speed, striking said schooner on her port cat-head, cutting her nearly if not quite to her keel, and running in board of the said schooner, passed the windlass bitts, smashing in her bow, so that the said schooner sunk within fifteen minutes after said propeller struck her, and she now lies, with her said cargo in her, in about thirteen feet of water.

Third. That at the time when the danger of a collision between the said vessels was first perceived as aforesaid on board the said schooner, it was impossible for her to get further out of the way of the said propeller; nor were there any means to which she could with propriety have resorted for that purpose, further than by signalizing the said propeller as hereinbefore mentioned.

7 Fourth. That at the time of the above-mentioned loss of the said schooner and her cargo, the libellants were the true and lawful owners of the said schooner Henry C. Winslow, and of her freight lost in her said cargo; that the said schooner was of the value of eleven thousand dollars, and the said freight of the value of fifteen hundred dollars or thereabouts. The said schooner was insured for , in the Ætna Insurance Company, which loss has not been adjusted or paid; and by reason of the carelessness, negligence, unskilfulness, and improper management of the said propeller, and of the collision thereby occasioned of the said propeller with the said Henry C. Winslow, the libellants have lost both the said schooner and her freight, and thereby have sustained damages to a large amount, to wit, to the sum of twelve thousand five hundred, for which they claim reparation in this suit.

Fifth. That all and singular the premises are true. Wherefore the libellants pray that process in due form of law may issue against the said propeller, her boilers, engine, and machinery, and her boats, tackle, apparel, and furniture; and that this honorable court
8 will pronounce for the damages aforesaid, and decree the same to be paid with interests and costs, and for such other and further relief and redress as to right and justice may appertain and the court is competent to give in the premises.

SARAH S. WOLVERTON.
JAMES E. PITMAN,
By EMMOMS, VAN DYKE & HAMILTON,
Proctors.

EMMONS, VAN DYKE & HAMILTON,
Libellants' Proctors.

On the fourth day of May, A. D. 1864, appeared personally William W. Wells, the master of said vessel Henry C. Winslow, and was sworn to the truth of the foregoing libel.

J. M. MILLER, *Clerk, &c.*

[5-cent stamp]

And same day filed their stipulation for the payment of costs as follows:

Libelants' stipulation.

9 District court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court, on the fourth day of May, in the year of our Lord one thousand eight hundred and sixty-four, by Sarah S. Wolverton and James E. Pittman, against the propeller Allegheny, her boats, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue, and the parties hereby consenting and agreeing that, in case of default or contumacy on the part of the libellant or their surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and they are, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against them by this court or, in case of appeal, by the appellate court

W. W. WELLS.
L. J. HIGBY.

Taken and acknowledged this fourth day of May, 1864, before me.

J. M. MILLER,
U. S. Commissioner.

DISTRICT OF WISCONSIN, *ss:*

Lewis J. Higby, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

L. J. HIGBY.

Sworn to, this 4th day of May, 1864, before me,

J. M. MILLER,
U. S. Commissioner.

[5-cent stamp.]

10 *Order for process and advertisement.*

Whereupon it is ordered by the court, that a monition issue to the marshal, returnable on the twelfth day of May instant, at eleven

o'clock in the forenoon, and that this court will on that day proceed to the trial and hearing thereof.

And it is further ordered, that notice be given by advertisement in the Daily Milwaukee News, a daily paper printed in the city of Milwaukee, and by notices posted in the most public places, at and near the place of trial, for at least six days.

Whereupon a monition issued as follows:

11 DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America, to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of Wisconsin, on the fourth day of May, in the year of our Lord one thousand eight hundred and sixty-four, by Sarah S. Wolverton and James E. Pittman, against the steam propeller Allegheny, her boiler, engine, machinery, boats, tackle, apparel, and furniture, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said propeller or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said propeller or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said propeller or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should ont be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin, on the twelfth day of May instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in said district, this fourth day of May, in the year of our Lord one thousand eight hundred and sixty-four and of our independence the eighty-eighth.

J. M. MILLER, *Clerk.*

EMMONS, VAN DYKE & HAMILTON,
Proctors for Libellants.

[SEAL.]
[50-c. stamp.]

12 MAY 5, 1864.—This day came Perry Hannah, James Morgan, William Morgan, and Albert T. Lay as claimants of said propeller Allegheny, and filed their claim as follows:

U. S. district court.

Claim.

SARAH S. WOLVERTON *et al.*
vs.
THE PROPELLER ALLEGHENY *et al.*

And now come Perry Hannah, of Grand Traverse, Michigan; Albert Lay, James Morgan, and William Morgan, of Chicago, and make claim to the said steam propeller Allegheny, her boiler, engine, machinery, boats, tackle, apparel, and furniture, and show that they, the said Perry Hannah, Albert Lay, James Morgan, and William Morgan, are the true and bona fide owners of said steam propeller Allegheny, and that no other person is the owner thereof.

PERRY HANNAH,
By ALBERT T. LAY, *Att'y.*
JAMES MORGAN,
By ALBERT T. LAY, *Att'y.*
WILLIAM MORGAN,
By ALBERT T. LAY, *Att'y.*
ALBERT T. LAY.

Albert T. Lay, sworn to the truth of the above claim, before me, this 5th day of May, 1864.

J. M. MILLER, *Clerk.*

And same day (May 5, 1864) said claimants presented their stipulation, with Harrison Ludington and Charles J. Kershaw as sureties, in the sum of $25,000 00, that they will abide and answer the decree of this court in this cause as follows:

13 District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the fourth day of May, in the year of our Lord one thousand eight hundred and sixty-four, by Sarah S. Wolverton and James E. Pitman against the steam propeller Allegheny, her boiler, engine, machinery, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned; and whereas the said steam propeller, her boiler, engine, machinery, boats, tackle, apparel, and furniture hath been seized, and is now in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from said marshal's return now on file in said court:

Appearing personally Perry Hannah, Albert T. Lay, James Morgan, and William Morgan, as the claimant of the said steam propeller, her boiler, engine, machinery, tackle, apparel, and furniture, and produced for sureties Harrison Ludington and Charles J. Kershaw;

and the said Perry Hannah, Albert Lay, James Morgan, William Morgan, Harrison Ludington, and Charles J. Kershaw, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of twenty-five thousand dollars, unto the said Sarah S. Wolverton and James E. Pitman, that the said claimants shall abide and answer the decree of the said court in the aforesaid cause, and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

PERRY HANNAH,
By ALBERT T. LAY, *Att'y.*
JAMES MORGAN,
By ALBERT T. LAY, *Att'y.*
WILLIAM MORGAN,
By ALBERT T. LAY, *Att'y.*
ALBERT T. LAY.
HARRISON LUDINGTON.
C. J. KERSHAW.

Taken and acknowledged this —— day of ————, 18—, before me,

———— ————,
U. S. Commissioner Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

————, part to the above stipulation, being duly ———, depose and say that he is worth the sum of ———— dollars over and above all his just debts and liabilities.

———— ————

We hereby waive any appraisal of the said steam propeller Allegheny, and consent that she be discharged from custody of the marshal upon filing the within stipulation.

EMMONS, VAN DYKE & HAMILTON,
Libelants' Proctors.

And also same day (May 5th, 1864) said claimants filed their stipulation for the payment of costs as follows:

14 District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the fourth day of May, in the year of our Lord one thousand eight hundred and sixty-four, by Sarah S. Wolverton & James E. Pitman, against the steam propeller Allegheny, her boiler, engine, machinery, boats, tackle, apparel, and furniture for the reasons and causes in the said libel mentioned; and whereas the said steam-propeller, her boiler, engine, machinery

tackle, apparel, and furniture has been seized, and is now in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from said return of said marshal now on file in said court:

Appearing personally Perry Hannah, Albert T. Lay, James Margan, William Morgan, as the claimant of the said steam-propeller, &c., and produced for surety Harrison Ludington; and the said Perry Hannah, Albert T. Lay, James Morgan, William Morgan, Harrison Ludington, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of two hundred and fifty dollars for costs unto the said Sarah S. Wolverton & James E. Pitman, that the said claimants shall abide and answer the decree of the said court in the aforesaid cause, and unless —— shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

PERRY HANNAH,
By ALBERT T. LAY, *Att'y.*
JAMES MORGAN,
By ALBERT T. LAY, *Att'y.*
WILLIAM MORGAN,
By ALBERT T. LAY, *Att'y.*
ALBERT T. LAY.
HARRISON LUDINGTON.

Taken and acknowledged this —— day of ————, 18—, before me.

———— ————,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

————, part —— to the above stipulation, being duly ——, depose and say that he is worth the sum of ———— dollars over ———— ————.

and above all his just debts and liabilities.

Whereupon it is ordered by the court that a warrant of restitution be issued to restore the said propeller Allegheny to the said claimants.

Warrant of restitution issued as follows:

15 DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the fourth day of May, in the year of our Lord one thousand eight hundred and sixty-four, by Sarah S. Wolverton & James E. Pittman, against the propeller Al-

legheny, her boiler, engine, machinery, boats, tackle, apparel, &c., &c., praying that the same may be condemned as forfeited to the said libellant; and whereas the said propeller Allegheny has been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas, also, a claim has been interposed and filed in said court by Perry Hannah, James Morgan, William Morgan, Albert T. Lay, and such proceedings have been thereupon had that, by the sentence and decree of said court in this cause made and pronounced on the fifth day of May, eighteen hundred and sixty-four, the said propeller Allegheny, &c., was adjudged to belong as claimed, and was ordered to be restored to the said claimant; therefore you, the said marshal, are hereby commanded to release the said propeller Allegheny from arrest, and to deliver and return the same unto the said Perry Hannah, James Morgan, William Morgan, Albert T. Lay.

And what you have done in the premises, do you make return thereof before the said court of admiralty on the twelfth day of May inst., at eleven o'clock in the forenoon of said day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, together with this writ.

Witness, the Honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this fifth day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of these United States the eighty-eighth.

[SEAL.] J. M. MILLER, *Clerk.*

16 *Return to monition.*

"In obedience to the within precept, I have, this fourth day of May, A. D. 1864, attached the steam propeller Allegheny, her boiler, engine, machinery, boats, tackle, apparel, and furniture, at Milwaukee, and have given due notice, by posting notices, to all persons claiming the same, that this court will, on the twelfth day of May instant, at eleven o'clock in the forenoon of that day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and make their allegations in that behalf.

"D. C. JACKSON, *Marshal.*
"By W. S. JACKSON, *Deputy.*"

Fees, $3 46.

Return to warrant of restitution.

"In obedience to the within warrant of restitution, I have this fifth day of May, A. D. 1865, released the steam propeller Allegheny, her boiler, engine, machinery, boats, tackle, apparel, and furniture, from arrest as commanded.

"D. C. JACKSON, *Marshal.*
"By W. S. JACKSON, *Deputy.*"

Fees, $7 36.

JULY 13, 1864.—This day came the respondents by their proctor, Mr. Mariner, and filed their answer as follows:

United States district court, district of Wisconsin.—In Admiralty.

Answer.

17 The answer of Perry Hannah, Albert Lay, William Morgan, and James Morgan, owners and claimants of the propeller Allegheny, to the libel of Sarah S. Wolverton and James E. Pitman, against such propeller.

And now comes Perry Hannah, of Grand Traverse, Michigan; and Albert Lay, James Morgan, and William Morgan, of the city of Chicago, owners and claimants of the said propeller Allegheny, and for answer to the libel of Sarah S. Wolverton and James E. Pitman, against said propeller, do allege and propound as follows:

First. That they admit that the propeller Alleghany is a vessel of more than twenty tons burthen, and duly enrolled and licensed for the coasting trade, and was engaged in the business of commerce and navigation between different States on the lakes and navigable waters connecting the same, as in the first article of said libel alleged.

Second. They admit that said Henry C. Winslow was a vessel of over twenty tons burthen, and then engaged in the coasting trade, duly licensed and enrolled in manner as in said second article in said libel alleged.

Third. They admit that said schooner, having a cargo of oats
18 on board, and being then tight, staunch, and strong, left said dock on the morning of said 4th day of May, 1864, at seven o'clock in the morning, in tow of tug W. K. Muir, as in said third article in said libel alleged; and they admit that after leaving said dock, in tow of said steam-tug, that the master of said steam-tug signalled the said propeller by one whistle to keep to the starboard side, but they deny that such master so signalled said propeller after said tug and said schooner reached the harbor piers, and, on the contrary thereof, they allege and propound that he so signalled said propeller when about nine hundred to a thousand feet above said harbor piers; and they deny that said propeller failed to take any notice of said whistle, or failed to reply thereto; and they deny that said propeller failed to take any steps to avoid a collision, but, on the contrary thereof, they charge the fact was and is, and these respondents do allege and propound that said propeller did notice such signal, and did reply thereto by a like signal of one whistle that it would keep to; and they say that thereupon the said propeller did keep to the starboard side as far as the depth of said river would permit; and they further al-
lege and propound that the master of the propeller took all
19 the steps hereinafter set forth to avoid a collision, and that the steps so taken were all that could have been taken on the part of the propeller to have avoided such collision; and they further allege and propound that true it is that afterwards, and when said tug, having said schooner in tow, came within about ten rods of

said propeller, it again blew another signal of one whistle, but they deny that said tug, at the time it blew said second signal, was well over on the south side of said harbor piers; and they deny that at the time that it so blew said signal said schooner was to the starboard of said tug, for the truth and fact is and was and so these respondents do allege and propound that the said tug was, if anything, to the northward of the centre of the channel, and that said schooner was following in its track; and they deny that the bows of the said schooner were more than from one hundred and twenty to one hundred and thirty feet south from the north pier; and they deny that there was abundance of room, or any room for said propeller to have passed clear of said schooner on the starboard side; and they deny that said propeller did not slacken her speed in passing up said straight cut, but they admit that said propeller and said
20 schooner collided between said harbor piers; and that such propeller struck staid schooner on her port cat-head; and that she cut through her bows, and cut her down several feet below her water-line, but not nearly to her keel; and that said schooner sank in about fifteen minutes. And they say that said collision did not happen in such manner as it is set out in said third article of said libel, but as follows, that is to say:

That said propeller Allegheny was upon a voyage from the port of Chicago to Sarnia, in Canada West, touching at the port of Milwaukee; that she arrived off the port of Milwaukee on the morning of the fourth day of May aforesaid, and proceeded to enter the harbor known as the Straight Cut, at the city of Milwaukee, running at the rate of about eight miles an hour; that, when within about half her length of the harbor piers, she shut off the steam from her boilers so as not to work her engine at more than one-third stroke; that soon after entering between the harbor piers, and before the propeller had proceeded more than two or three lengths, the master of the propeller saw the schooner descending the river in tow of a tug; that he immediately caused the steam to be shut off entirely from the engine of the propeller, in order that the schooner might get
21 between the harbor piers before he met her, and thereafter allowed the propeller to proceed with the way she already had; that when he heard the signal from the tug to keep to the starboard, he immediately answered it with a like signal of one whistle, thereby signifying his assent to keep to the starboard, and that he did thereupon and thereafter keep said propeller as far to the starboard as he was able; that the said propeller was at the time drawing eleven feet two inches of water, and that towards the inner end of the harbor piers there is a shoal on the north side of said harbor, which is the starboard side to vessels entering said harbor, which shoal extends out towards the lake about seven hundred feet, so that the centre of the channel for vessels drawing as much water as the said propeller was then drawing, is from twenty-five to thirty feet south of the centre line between the harbor piers; that said propeller kept as far over to the starboard as it was able and not go aground, and that it proceeded up about the centre line between the piers; that,

in so proceeding so far to the starboard side of such channel, the propeller dragged the bottom, so that she would not mind her helm;

22 that said propeller, proceeding up about the centre line between the piers, gradually losing her speed while approaching the river; that meanwhile the tug with the schooner in tow was coming down the river about the centre of the stream, till, as she approached the entrance of the harbor piers, she did not follow the bend of the channel to the southward, but entered the harbor piers on the north side of the centre of the piers, which is the starboard side to vessels descending the river; that, when the schooner had got within about five hundred feet of the propeller, the master of the propeller saw that the vessels, if they proceeded at the speed at which they were going, must meet in the bend of the river where it turns out of the old channel to come into the Straight Cut between the piers, gave the order to the engineer of the propeller to reverse the engines of the propeller, and that thereupon the engine was immediately reversed; that the tug, instead of keeping to the starboard of the channel, agreeably to the signal it had given, kept right on down in the centre of the channel of the river, or to the northward of it, until it had come to within about ten rods of the propeller, and after the engines of the propeller had commenced backing; that

23 the master of the tug then became aware of the position of the propeller, and of the fact that she would not mind her helm; and that although he saw that the master of the propeller had put her helm hard over, that she would not mind it, and that there was at the very least one hundred feet of clear water, deep enough to float the Winslow, to the south of the propeller, and that there was nothing to prevent the said tug and said schooner going at least fifty feet to the southward of the propeller; that it then became and was the duty of the master of said tug to have gone to the southward of the propeller, so as to avoid colliding with her, but that the master of the tug, disregarding his duty in this behalf, did not and would not so go to the southward of the propeller, but kept on his course down the centre of the river, and blew another signal to keep to the starboard, which the propeller, inasmuch as it had commenced backing its engine, did not answer; that the tug kept on, and as soon as it had crossed the propeller's bows, instead of keeping over to the south piers, as it ought to have done, straightened up between the piers, and put on all its steam to sway the schooner around between the piers, and, by so doing, drew the bows of the schooner right into the propeller's stem, and caused the collision in said third article in said libel mentioned; that

24 there was at least one hundred feet of clear water between the propeller's stem and the south pier, all of which was deep enough to float the said tug and said schooner Winslow, and the most part of it deeper than where the propeller had been and then was running; that at the time the propeller and schooner collided, the propeller had no preceptible motion forward, but, if she had any motion, she was going astern; and that said collision was occasioned solely by the carelessness, negligence, and want of skill of the mas-

ter of the tug, in not keeping his tug and said schooner over to the starboard of the channel, as he had signalled said propeller he would do, and in not going to the southward of the propeller after he saw that the propeller would not mind her helm, and not through any want of care, skill, or diligence in the management and navigation of the propeller.

Fourth. To the third article, they allege and propound they do not know it was first perceived on board said schooner that there was danger of a collision between such vessels, and they cannot therefore allege or propound whether it was impossible for said schooner, after it was so perceived that there was danger of a collision between
25 such vessels, to get out of the way of said propeller, nor whether there was any means to which she could thereafter have resorted with propriety to have prevented such collision, as in said third article propounded; but they do allege and propound that when said schooner was within one hundred feet of said vessel, that she might have passed said propeller's bows in safety, if the said tug and said schooner had attempted to do so, and that if said schooner had kept on the starboard side of the river and of the cut between the harbor piers, as she signaled she would do, the collision in said libel alleged would not have occurred, and if a reasonable look-out had been kept on said tug and said schooner, that it would have been apparent that there was danger of a collision, unless they changed their course before said schooner was within one hundred feet of said propeller, and long enough prior to such collision, to enable said schooner to have gone fifty feet to the starboard of said propeller.

Fifth. They say that they have no knowledge or information or belief, as to whether the said libelants were, at the time of the commencement of this cause, the true and lawful owners of said
26 vessel, nor of the value thereof, nor of the said freight thereof, but they allege that the said libelants have by reason of any careless, negligent, unskilful, or improper management of said propeller, or by any collision occasioned by any such careless, negligent, unskilful, or improper management of said propeller, lost said vessel, or said freight, or any thereof, or have thereby sustained any damage whatever.

Sixth. And they do further allege and propound that all and singular the allegations above alleged and propounded are true.

Wherefore they pray that they may be dismissed hence with their costs in this behalf to be taxed.

E. MARINER,
Proctor for Claimants.

On the 28th day of June, 1864, personally appeared before me James Morgan, one of the claimants above-named, and made oath that the foregoing answer was true.

J. P. C. COTTRILL,
U. S. Commissioner Dist. of Wisconsin.

Hearing.

And now at this same term, to wit, September term, A. D. 1865, and on the eighteenth day thereof, to wit, on the fourth day of October, A. D. 1865, the following proceedings were had, to wit:

27 *Agreement as to testimony.*

SARAH S. WOLVERTON *et al.*
vs.
PROPELLER ALLEGHENY, &c. } In admiralty.

This day came the parties by their advocates and agreed that the testimony taken and read in evidence in the case of Bernard Goldsmith vs. the Propeller Allegheny, shall be considered as taken in this case and to be read at the trial thereof; and this cause came on to be heard, and not being concluded, the further hearing was adjourned until to-morrow morning.

And on the nineteenth day of said term, to wit, on the fifth day of October, A. D. 1865, the following proceedings were had, to wit:

Hearing.

SARAH S. WOLVERTON *et al.*
vs.
PROPELLER ALLEGHENY, &c. } In admiralty.

This day came the parties by their advocates, and the hearing of this cause was resumed, and not being concluded, the further hearing was adjourned until to-morrow morning.

Hearing.

And on the twentieth day of said term, to wit, on the sixth day of October, A. D. 1865, the following proceedings were had, to wit:

28 *Amendments to libel filed, &c.*

SARAH S. WOLVERTON *et al.*
vs.
PROPELLER ALLEGHENY, &c. } In admiralty.

This day came the parties by their advocates, and, by consent, amendments to the libel were filed, to stand denied without further answer; and the hearing of this cause was resumed, and not being concluded, the further hearing was adjourned until to-morrow morning.

And said amendments to the libel are as follows:

District court of the United States for the district of Wisconsin.

Amendments.

JAMES E. PITMAN and SARAH S. WOLVERTON, libellants,
vs.
THE PROPELLER ALLEGHENY, HER BOILER, engine, machinery—Perry Hannah and others, respondents.
} In admiralty.

Amendments to the libel in the above-entitled action.

Let there be added to the fourth article the following, to stand as if originally made a part of said libel:

That since the filing of said libel, the said Henry C. Winslow has been raised and repaired. That the expense thereof was the sum of four thousand eight hundred and twenty-two dollars and twenty-one cents, which expenses were necessary to save the said vessel;
29 and which repairs were necessary to put her in the like condition which she was in immediately preceding the collision; and the prices were the usual and ordinary prices for such labor, work, and materials. That the said schooner, by reason of the collision aforesaid, was detained in getting her afloat and completing her necessary repairs aforesaid for the space of thirty-six days. That she could have earned, could have been charted for, and her services were worth in the market, the sum of at least fifty dollars a day over and above her expenses during the period of the detention aforesaid, amounting to the sum of eighteen hundred dollars, making the total amount of damages the sum of six thousand six hundred and twenty-two dollars and twenty-one cents, which the libellants claim they are entitled to recover, with interest from the eighth day of June, one thousand eight hundred and sixty-four.

EMMONS & VAN DYKE,
Proctors for Libelants.

OCTOBER 7, 1865.—Statement of amount due filed as follows:

District court of the United States for the district of Wisconsin.

Statement of amt. due.

JAMES E. PITMAN and SARAH A. WOLVERTON
vs.
THE PROPELLER ALLEGHENY, &c.
} In admiralty.

The said propeller to said libelants, Dr.

30 To sundry expenses in getting the vessel Winslow afloat, as per schedule F, p. 62, of case $1,159 23
To repairs of vessel, as per schedule E, p. 63 ..... 3,662 98
To detention during repairs, per proofs 1,800 00

$6,622 21

Interest from June 8, 1864, to October 6th, 1865, 1 year 3 months and 28 days 614 96

$7,237 17

And on the twenty-first day of said term, to wit, on the seventh day of October, A. D. 1865, the following proceedings were had, to wit:

Decree.

SARAH S. WOLVERTON and JAMES E. PITTMAN
vs.
THE PROPELLER ALLEGHENY, and PERRY Hannah, Albert T. Lay, James Morgan, and William Morgan, claimants, and Harrison Ludington and Charles J. Kershaw, stipulators. } In admiralty.

This day came the parties by their advocates, and on consideration of the pleadings and proofs and the arguments thereon, it is ordered by the court that the Propeller Allegheny, her boiler, engine, machinery, boats, tackle, apparel, and furniture, are liable in maritime lien for the collision as propounded in the libel, to the amount of seven thousand two hundred and thirty-seven dollars and seventeen cents.

31 Whereupon it is ordered, adjudged, and decreed by the court that the libelants do have and recover of Perry Hannah, Albert T. Lay, James Morgan, and William Morgan, the claimants, and Harrison Ludington and Charles J. Kershaw, their stipulators, the said sum of seven thousand two hundred and thirty-seven dollars and seventeen cents, with costs to be taxed; and, in default of the payment of this decree and the costs within ten days, that an execution be issued against them for the same.

A. G. MILLER.

Decree signed, recorded, and enrolled, October 7th, A. D. 1865.
J. M. MILLER, *Clerk*.

Appeal.

And this day came the respondents in open court and prayed an appeal to the United States circuit court for the district of Wisconsin. Whereupon it is ordered by the court that the said appeal be and is hereby allowed, and that the said respondents enter into a bond with sureties, to be approved by the judge, in the penalty of twelve thousand dollars for a supersedeas, within ten days.

OCTOBER 13, 1865.—This day came the respondents by their proctor and filed their appeal bond as follows:

Appeal bond.

Know all men by these presents, that we, Perry Hannah,
32 Albert T. Lay, James Morgan, and William Morgan, principals, and Harrison Ludington and Charles J. Kershaw, sureties, are held and firmly bound unto Sarah S. Wolverton and James E. Pitman in the sum of fifteen thousand dollars, lawful money, to be paid to them the said Sarah and said James, their executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of our heirs, executors, administrators, and assigns firmly by these presents. Sealed with our seals, and dated this 9th day of October, 1865.

Whereas the above bounden Perry Hannah, Albert J. Lay, James Morgan, William Morgan, Harrison Ludington, and Charles J. Kershaw have appealed to the circuit court of the United States for the district of Wisconsin, from a decree of the district court of the United States for said district, bearing date the seventh day of October, 1865, in a cause in said court pending, in which said Sarah S. Wolverton and James E. Pitman were libelants, and the said Perry Hannah, Albert T. Lay, James Morgan, and William Morgan were claimants, of the propeller Allegheny, and respondents:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal with effect and pay all such damages, costs, charges, and expenses as shall be
33 awarded and decreed against them as such appellants therein, then this obligation to be null and void, otherwise of force.

[L. S.] JAMES MORGAN.
[L. S.] ALBERT T. LAY.
[L. S.] WILLIAM MORGAN.
[L. S.] PERRY HANNAH.
[L. S.] C. J. KERSHAW.
[L. S.] HARRISON LUDINGTON.

Signed, sealed, and delivered in presence of—
A. G. VAN SCHAICK.
O. BREUSTER.

OCTOBER 13, 1865.

This bond approved, no objection being made thereto by appellees' counsel present.

A. G. MILLER, *Judge.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete exemplification of the record in the case of Wolverton et al. vs. Propeller Allegheny, as it was completed before the filing of the stipulation annexed to the book hereto annexed.

In testimony whereof, I have hereunto set my hand and duly af-

fixed the seal of the said court at the city of Milwaukee, in
34 the said district of Wisconsin, this sixth day of April, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the said United States the ninetieth.

[SEAL] J. M. MILLER, *Clerk.*

[5-ct rev. stamp.]

District court of the United States, district of Wisconsin.

SARAH S. WOLVERTON and JAMES E. PITMAN *vs.* THE PROPELLER ALLEGHENY—PERRY HANNAH *et al.*, claimants. } In admiralty.

It is hereby stipulated that a copy of the libel and answer, docket entries, and decree in this cause be annexed to the annexed printed case; and that the whole, being duly certified by the clerk of this court, shall constitute the copy of the record and be the clerk's return in this cause.

October 26, 1865.

EMMONS & VAN DYKE,
Proctors for Libellants.
E. MARINER,
Proctor for Resp.

Filed April 7, 1866, at 11¾ o'clock a. m.
J. M. MILLER, *Clerk*

35

36 United States district court for the district of Wisconsin.

SARAH S. WOLVERTON and JAMES E. PITMAN *vs.* THE PROPELLER ALLEGHENY—PERRY HANNAH, ALBERT T. LAY, JAMES MORGAN, and WILLIAM MORGAN, claimants.

GEORGE W. MADISON, being first duly sworn, deposes and says:

I was, on the fourth of May, 1864, in charge of the steam-tug Muir, and was so before I went into the army. I was for three years captain of the tug before going into the war. The first towing business done by the tug Muir, on the fourth day of May, 1864, was towing in the bark Henry C. Winslow. She was lying at Plankinton's warehouse, below Huron-street bridge, before we took her in tow. It was about seven o'clock in the morning before we got under weigh. We passed on without any difficulty until we went through the bridge, going very slow. Down near the entrance to the Straight Cut, I noticed a propeller coming in; she was near the mouth of the Straight Cut, near the outer end. I kept well over, as I usually do, to the

south side of the harbor, and blew a signal, one whistle, giving her notice that I was to take my side and she hers; and a moment afterwards I thought I discovered the man at the wheel on the propeller was rolling it the wrong way. I blew another signal; neither of the signals were answered. The wind was nearly southwest, and the vessel in the meantime had been making sail. I kept over to my own side as well as I was able, and as far as it was safe, leaving plenty of room on the north side for the propeller to pass. I had no idea of an accident at the time the propeller passed the tug. The Propeller struck the vessel on her port bow. She sank in a few minutes. The course of the propeller did not seem to be altered at all. When we first opened the Straight Cut into view, that is, when we could first see through the whole of it, the propeller was steering directly up the Straight Cut, and nearer the south than the north pier, and I could not discover, up till the time she struck the
37 vessel, that her course had been altered one particle. I saw them put the wheel over on board the propeller, but the vessel did not seem to mind the helm at all.

I should judge we were going, at the time of the collission, from four to five miles an hour. Four miles might perhaps be the outside. Owing to the vessel having fore-and-aft sails set, she might be going at that rate. I don't think we were going at an improper speed at the time. I do not know of any rule; but a vessel going at four miles an hour will steer better than if going only two miles an hour. The vessel followed with the tug, and steered like a yacht. I think the bow of the vessel, at the time of the collission, was nearer the south pier than the north, just in the knuckle of the bend; we had just steered up in line with the piers. It would not have been safe to have gone much closer to the south pier than we did with the tug, owing to the sheer at that point, and to keep from getting against the south pier. The Winslow's bow, in turning, kept at the starboard side of the tug; in other words, the tug kept inside of the ring on the turn.

Ques. At the time the propeller Alleghany struck the port bow of the Winslow, was the bow of the Winslow aport or astarboard of the tug?

Ans. It was to the starboard of the stern of the tug.

Ques. What distance was it from the bow of the Winslow to the north pier at the time of the collission?

Ans. She was more than half-way across the channel to the south pier. I do not know the distance between the piers.

Ques. Was there room enough for the propeller to have passed on the north side?

Ans. Yes, sir.

Ques. What was there to prevent her passing on the north side?

Ans. Nothing but her inability to steer and answer her port helm. I was more to the southward than in the usual track of vessels taken in tow.

Ques. When you saw the propeller Alleghany enter the east end

of the harbor piers, did you see any other propeller making for the piers, and how far was she from the Alleghany?

Ans. The propeller Maine entered the piers about two lengths astern of the Alleghany.

Ques. Do you know, or can you state, whether the said two
38 propellers, the Maine and the Allegheny, were not both engaged in a struggle to enter the piers first?

(Objected to generally.)

Ans. I do not know of my own knowledge; I had them in view too short a time to judge.

Ques. Did either one hold up?

Ans. The Maine held up after the collission. Neither held up before the collission that I am aware of.

Ques. When you saw the propeller Alleghany enter the harbor piers at the east end, about what headway had she on?

Ans. As near as I could judge, she was going about eight miles an hour.

Ques. About what speed was it proper to come into the harbor?

Ans. It depends upon their steering. Some vessels can't go well in shoal water, and they must go slow. She did not seem to steer. The Alleghany came too fast to steer; but if she had been a good steering boat, it would have been perfectly safe for her to have gone much faster. "Much faster" would not mean double that speed, or anything of that kind; an unreasonable speed would not be safe in any harbor.

Ques. What is the distance from the east or outer end of the harbor to the place where the Alleghany ran into the Winslow?

Ans. Almost the whole length of the pier; I do not know the distance.

Ques. After the Alleghany entered the outer end of the piers, how much, if any, did she slack her speed before the collision?

Ans. Not any, perceptible to me, until she struck.

Ques. How hard a blow did she strike?

Ans. Very hard; made a hole about six feet across, and the strongest place except her stem.

Ques. What was there to prevent the propeller's being stopped entirely when a collission became eminent?

Ans. Nothing, except the want of disposition on the part of the master to ring his bell. Of course, if he had done that and backed at the instant he struck, it would have very little effect.

Ques. What ought the propeller to have done to have avoided that collision?

(Objected to.)

Ans. Checked down slow enough to steer his vessel properly. There was no difficulty in getting her past if she had proper steerage-way or been under control.

39 Ques. What could the tug Muir or the Henry C. Winslow have done more than what was done to avoid the collision?

Ans. I don't know of anything they could have done. It is not possible for a tug to stop and back with a vessel in tow.

Ques. Might you not have gone farther south?

Ans. Not with safety to the vessel.

Ques. Where were you when you first signaled the propeller?

Ans. I was abreast of that point of the dock where the old harbor turns, and (looking on a map) about opposite figures 66.

Ques. What did you do when you first saw the propeller?

Ans. I kept over more than I was intending to do first, and blew the whistle one blast.

Ques. What whistle did you blow?

Ans. The steam whistle on the boat.

Ques. How far could this whistle be heard?

Ans. Several miles under favorable circumstances.

Ques. What was the reason you blew this whistle?

Ans. The law and custom requires it.

Ques. What does one whistle indicate?

Ans. Vessels pass on the starboard side.

Ques. Which side would that be to a propeller coming in?

Ans. North side—piers running east and west.

Ques. What should the propeller have done when you so signaled her?

Ans. Answered the signal, taken the proper course to pass on the starboard side, and put her helm a'port.

Ques. Did she do either?

Ans. She did not alter her course; I saw the men rolling the wheel. I stated before that, after I thought I observed them rolling the wheel the wrong way, I blew another signal.

Ques. Did the Alleghany reply to your signal?

Ans. She did not.

Ques. What did you do then?

Ans. I had only one course to take, and that was to go straight ahead; I did not think she was going to get in the way.

Ques. How far were you from the Alleghany when you blew the second signal?

Ans. About a couple of lengths, say two hundred feet; it is difficult to tell the length without measurement.

40 Ques. Did the propeller reply to that signal?

Ans. No sir.

Ques. Did she give way or change her course?

Ans. I could not discover that she changed her course perceptibly or gave way a particle.

Ques. When you gave this second signal, could the propeller then have passed on the north side?

Ans. Yes.

Ques. how happened it that she did not?

Ans. I can only answer that I suppose she would not answer her helm.

Ques. Did she make any effort to pass on the north side?

Ans. I saw them roll the wheel, and they rolled it to the starboard, and they rolled it until they rolled it hard over, as I thought, which fooled me at first, and made me blow the second signal. Their

wheel works as vessels' do, I believe, and not as steamers' usually do; Steamers' are usually starboard wheel and starboard helm; vessels the contrary way.

Ques. What effect did the working of this wheel have upon the course of this veseel?

Ans. It ought to have steered her, but she seemed to go as she wanted to; she had, if anything, a sheered port.

Ques. How near did the propeller pass the tug?

Ans. It might have been 20 feet and might not have been so much; she passed very close to the north of the tug.

Ques. How far astern of the tug was the Winslow in tow?

Ans. About twenty-five feet from her bow to the tug's stern.

Ques. If the Winslow was that near to the tug, and, as you have before stated, her bow starboarding the tug, and the propeller passed you 20 feet north, how could the propeller have struck the port bow of the Winslow without the propeller sheering aport considerably?

Ans. They were not running on parallel lines; she would not require to have sheered much.

Ques. When the propeller Maine saw you, in the act of straightening up in the harbor piers, the Maine then being in the act of entering the harbor, what did the propeller Maine do?

(Objected to; question assumes things not proven.)

Ans. After the collission I ascertained she was stopped. I did not hear her bell. I don't know at what time her bells were rung.

41 Ques. Was she stopped before or after the collision?

Ans. I first noticed she was stopped after the collision.

Ques. Steering as wildly as you have described the propeller Alleghany to have been steering, and then being in the act of entering the harbor, and seeing your tug with this vessel in tow in the act of straightening up in the turn of the harbor, what ought the propeller Alleghany to have done to have avoided that collision?

(Objected to, because it assumes matters not proved and assumes matters contrary to the proof already in.)

Ans. The remedy for bad steering was to go slower; he ought to have checked down sufficiently slow so that he could have handled his boat.

Ques. What kind of a morning was that?

Ans. A fair morning, pleasant weather and clear.

Ques. Was there any stress of weather outside?

Ans. No, sir; a nice sailing breeze, wind about southwest.

Ques. When you first saw the propeller and gave your first signal from the locality you have described, could you see her with the naked eye or only with a glass?

Ans. With the naked eye.

Ques. Was your tug and the vessel you had in tow equally visible from the east end of the harbor as the propeller to you?

Ans. Yes, sir.

Ques. When you were rounding into the piers, from the position

where you signalled, ought not that propeller to have stopped until you got straightened up, unless they knew they could steer the boat and keep on their own side of the harbor?

Ans. According to custom, it was their business to steer clear of a collision, and to take such measures as were necessary; if the captain thought he could not avoid a collision without stopping, it was certainly his business to stop; the vessel could not stop.

Cross-examination:

Ques. What do you meam by starboard or larboard?

Ans. Starboard is to the right, and larboard to the left, and port to the left.

Ques. How far were you from the opening of the piers when you first saw the Alleghany?

Ans. I was below Kellog and Strong's warehouse when I first saw the propeller enter the harbor, a short distance below the elevator, betwixt that and the next warehouse; the propeller was then about the end of the piers; not being then able to see the water, I could not place her exactly. I had two men on deck of the tug then, besides myself, one man and the engineer. I was at the wheel myself. At that particular time I could not tell what steam I was carrying. We were not working our engines at full stroke, cut off about a third, I think. We had not opened her full at all. I was not in any hurry. I wanted to let the captain to get sail on the vessel before I let go of her. I did not direct the engineer to work the engine full stroke at all. I discovered that the propeller and the tug would meet in the bend, fearing that the propeller might be anxious on which side I wanted to go. I gave him the signal. I gave it about the middle of block 66.

42

Ques. About how far were you from the place of collision when you blew the whistle first?

Ans. Several hundred feet; it may have been 600 or 700 feet; I could not tell whether more or less than 600 feet; I am not able to estimate distance well with the eye.

Ques. Do you recollect the stove factory down there on the north side? Were you abreast or below that when you blew your whistle the first time?

Ans. Above it.

Ques. Suppose you blow your whistle once, and the propeller answers twice, what do you understand by that?

Ans. It means that she wants to go the other side, the vessel coming down having the right of way; if I could not grant the request, I would repeat my whistle, and the vessel coming in would be forced to take her own side. The tug had two lines from the vessel, I think.

Ques. What is the course running down the river from Kellogg & Strong's elevator till you open the Straight Cut?

Ans. Southeast nearly.

Ques. How much does it vary from southeast, and which way?

Ans. I never laid it off on the chart, and I can't tell you. The tug's compasses very seldom work accurately enough to tell.

Ques. How much water was the Winslow drawing?

Ans. In the neighborhood of ten feet, I think.

Ques. Where is the channel running down the river below Kellogg and Strong's warehouse?

43 Ans. It is good water for her anywhere, except near the bank below Kellogg and Strong's.

Ques. Is there any channel where the water is deeper than the other below Kellogg and Strong's?

Ans. I suppose in the centre—away from the banks—anywhere. I never found any difficulty by touching anywhere below Kellogg and Strong's. I don't think any deep-loaded vessel could get quite to the dock anywhere below that shed, perhaps within fifteen feet.

Ques. Is there any other place, except along that shed, where a vessel drawing 11 to 12 feet of water could get to that dock?

Ans. I don't think any vessel drawing that water could get close to the dock anywhere along there. I mean from Kellogg and Strong's warehouse anywhere to the old harbor. There may be one dock dredged out, but I don't believe there is. I mean by dredged out, lately dredged.

Ques. How near could a vessel of the draft of the Winslow that morning have to got the dock?

Ans. I don't think that in any place below Kellogg and Strong's less than 12 to 20 feet.

Ques. How deep is the water between the piers?

Ans. I think 12 feet in the lowest place in the channel. I mean shoalest by lowest.

Ques. Is there any channel between the piers?

Ans. There is a shoal spot near the north pier, a short distance from the west end.

Ques. How deep is the water there?

Ans. About eight feet near the pier.

Ques. How is it on the south pier?

Ans. I have not measured, nor have I heard; I have never struck there.

Ques. How much water does your tug draw?

Ans. From seven to eight feet; it depends on the amount of coal.

Ques. Have you ever made soundings to find out how shoal the water is there along north pier at this shoal place?

Ans. No; it is a small place; I do not know how far toward the east end of the pier it extends; it is about ten to fifteen feet wide; it is by the eddy creating a bar there. It is about a little more than the length of the tug from the west end of the pier where I got aground with the tug.

Ques. About how far is the piers apart?

44 Ans. Over two hundred feet; I have heard they are 260 feet apart.

Ques. Whereabout were you when you first apprehended a collison?

Ans. Not until it happened.

Ques. How fast was the propeller going at the time of the collision?

Ans. She came up the Straight Cut, I think, at the rate of eight miles an hour, and I could not see that her speed decreased materially at the time she struck.

Ques. Does the Alleghany carry a high or low pressure engine?

Ans. My impression is, it is high pressure, but I am not certain.

Ques. At the time of the collission was she working her engine?

Ans. I think she was.

Ques. Which way?

Ans. I cannot say; I was noticing the vessel, but I saw her backing immediately after she struck.

Ques. Was the Alleghany working her engine all the time from the time she entered the piers until the collission?

Ans. I could not say; I did not notice whether she was exhausting steam or not. The wheel on the tug works directly with the vessel.

Ques. When you saw there was a chance for a collission did you change your direction?

Ans. No, sir.

Ques. How long before you blew the second signal did you change your course to go out of the Straight Cut?

Ans. I can't tell exactly; I was changing my course and making the turn when I blew the second signal.

Ques. After you blew the second signal, did you change your wheel?

Ans. I had not fairly turned when the collision took place. The tug had not fairly turned so as to face the harbor when the collission took place, but nearly so; the tug and the vessel had to make the same turn, and we were going steadily round.

Ques. How long was it after the collision when you observed the engine of the Alleghany backing?

Ans. It was not more than a moment that I noticed it after the collision occurred. I was about twenty feet from the propeller when the colsion occurred. I was well forward in the pilot house when the collision occurred.

Ques. What proportion of the length of the propeller had the bow of the tug lapped at the time of the collision?

45 Ans. Near to midships, I think.

Ques. Did you part your line at the time of the collision?

Ans. I do know whether the line parted or whether it slipped around the timber-head.

Ques. How far did the propeller back after the collision?

Ans. I could not say. I was engaged in winding the tug. I ran down to the south side of the Alleghany and the north side of the Maine, and turned up, and pushed the vessel up against the north bank as near as I could get her. The Maine ran up the river ahead of me. I don't think the Alleghany went up until I got to the vessel. She lay against the north pier for a few moments. When I got back to the Winslow she was settling fast. I don't think it was three minutes after I got to her that she went down. I moved one end of

her twenty-five feet; the other I did not move but little, as it was against the bank.

Adjourned until May 10th, 1864, at 8½ o'clock a. m.

JAMES MITCHELL.

MAY 10*th*, 1864.

Parties met, and the foregoing testimony being read over to the witness, the examination proceeded.

Question. Except this shoal place that you speak of, next the north pier, what other shoal places are there between the harbor piers?

Answer. I don't know of any other.

Ques. Are you quite sure that there are none?

Ans. I have never seen any. I have towed vessels out, deep-loaded vessels, without their touching bottom.

Ques. Is their any channel between the piers, or is it a uniform bottom?

Ans. I don't know what the bottom is or how uniform it is. I never had any trouble with vessels anywhere except at that one spot described, at the north pier.

Ques. Are you sufficiently familiar with the ground between the piers as to say whether there is a particular channel there or not?

Ans. I don't know that there is. I towed out the largest vessels of the last fleet that was here, as I had the largest boat, and none of them touched bottom; and I have been all over the Straight Cut. There is water enough all over for the deepest-loaded vessels, except at this one spot at the north piers, and close to the piers, as we never go close to the piers.

46 There is a channel for ordinary loaded vessels anywhere except close along the line of the pier.

Ques. How deep is the water close to the piers at other places except this shoal place?

Ans. I could not give you the exact depth. I should think, in generality of places, it was from 9, 10, to 11 feet deep close to the pier. This I should judge to be the depth from seeing vessels and tugs laying along there.

Ques. Whereabout is the water only nine feet deep, close to the pier?

Ans. Close to the end of the shoal spoken of.

Ques. What other place?

Ans. I cannot tell you; I have taken no measurements of the depth of water since I have been back, except as judging from shoals.

Ques. Are you able to say that there is any place along either of the piers, except at the west end of the north pier, where this shoal is, where the water is not 12 feet deep right along the pier?

Ans. Not from measuring it myself.

Ques. Are you able to say from any other way than from measuring it yourself, at any particular place?

Ans. At any particular point? No, sir.

Ques. Does the water shoal next to the piers as it does along the docks on the river?

Ans. The channel was dredged out in the Straight Cut after the

piers were set. I think the water shoaled to the piers as it does to the dock, but not from the same cause, the docks are filled up with sand owing to vessels not being able to get near the dock, and the sand being thrown over fills up the docks so rapidly. My idea is, that the water shoals toward the piers, but not to the same extent as the docks, as no sand gets thrown in, and the Striaght Cut could not have been dredged close to the piers; so that it must be shoaler there, but not for any distance.

Ques. Did you hear the engineer's bell at any time when you were alongside the Alleghany?

Ans. No, sir; not to notice it.

Ques. How long were you alongside of her at the time the collission occurred?

Ans. I don't think we stopped at all, but passed right along—slowly, of course. I could not tell whether the lines were cut, or parted, or slipped round the timber-head; but when I found them gone, 47 I went right ahead.

Ques. Were the lines strong enough to have stopped the tug?

Ans. I don't think the tug could have parted the lines. I think they would have stopped her.

Ques. Were the lines from the tug to the vessel so fastened to the tug that if one of them had been cut by the Alleghany the other would have slipped off without parting the lines?

Ans. There were two lines; no connection between them. I did not make them fast myself that time. The usual way is to make a sufficient number of turns around the timber-head without tying them, so that they can be easily slipped off.

Ques. Was there anybody then at the stern of the tug near the lines when the collision happened?

Ans. Yes; there was a man there, a deck hand. He is the other man spoken of as being on deck. It is his bnsiness to take care of those lines. I can't tell the man's name. I think they call him Harman.

Ques. How fast do you ordinarily run towing vessels here?

Ans. It depends upon circumstances, the draught of water of the vessels, and size. Taking a vessel the size of the Winslow, and her draught, five or six miles an hour is an ordinary speed.

Ques. How much current was there in the river then?

Ans. The current was not sufficiently strong to attract attention; it was so little.

Ques. Was not the wind such that morning as to help the current out of the river?

Ans. It does not always have that effect. Yesterday the wind was off the land, and the current was then running in very rapidly.

Ques. Was not the wind such that morning as to add to the current of the river?

(Objected to.)

Ans. I have stated in the first place that the wind was southwest, and in another place that there was very little current. I do not

know how I can say that this wind caused a considerable current, when the fact was that there was not a strong current. I don't know that the wind that morning would have caused more current in the river.

Ques. Do you know what effect the wind blowing from particular directions has upon the current?

48 Ans. I have noticed northeast winds particlarly making a very strong current.

Ques. Was the current in the river that morning a mile an hour?

Ans. I don't think it was.

Ques. Half a mile?

Ans. It might have been more than half a mile or quite a mile; but it was not noticeable so as to refer to it in managing the boat, as we usually do when there is a strong current.

Ques. How many men were there on the deck of the Alleghany?

Ans. I do not know.

Ques. Was the captain on?

Ans. I do not know the captain. I saw some one on the pilot house whom I supposed to be the captain.

Ques. What was he doing?

Ans. Standing in his usual position in the pilot house. I did not see him doing anything.

Ques. Were there any men at the wheel?

Ans. I saw one; there might have been more. I saw one side of the wheel plainer than the other.

Ques. Did you see any of the mates on board at that time?

Ans. Not to notice them.

Ques. Did you see any of the seamen around the decks of the vessel that you noticed at all?

Ans. I did not notice them.

Ques. Did you see any men forward on the propeller getting out lines, as vessels usually do?

Ans. I did not. I did not notice any men on board the propeller except the captain and the man at the wheel. There might have been a dozen there and I not have noticed them.

Ques. When the propeller was coming in after you had blown the first signal, are you quite sure that she did not answer it?

Ans. I am positive.

Ques. Was the wind blowing strong enough so that you could not have heard it?

Ans. No, sir. I should have heard it had she blown it.

Ques. Were you not quite a ways apart at the time?

Ans. Not so far but it could have been easily heard. We were not a quarter of a mile from each other at that time I think. I

49 blew the signal the first time when we were opposite block 66.

Ques. Whereabout was the propeller when you blew the first signal?

Ans. She was near the entrance; whether near the outside or just inside, I could not tell. I think she was just about the end of the pier. She was just about entered. I could not tell exactly, as I

could not see the water. The time I whistled I had not opened the Straight Cut.

Ques. Have you ever been master of a propeller running on the lakes?

Ans. No, sir.

Ques. How long have you been master of a tug?

Ans. Three years before this spring, 1858, 1859, and 1860, most of the time in Milwaukee; also, Su St. Marie river and Detroit river.

Ques. If the propeller had gone to the starboard, and not answered your signal, would it have made any difference in your course?

Ans. No, sir. In these cases we would go by the printed regulations and signals.

Ques. If she had neither answered your signal or changed her course, would you have altered your course or have gone by the regulations?

(Objection, improper, inadmissible, and enquiring into what the commander of one vessel might have done, or might do, to avoid the improper conduct of the other in imminent danger.)

Ans. If, before I got past the old harbor, I had known that the propeller was bound to run into the vessel, I should have taken her up into the marsh. I might go still farther and say, if I had known the propeller was bound to run into her, I would have lain at the dock and allowed her to run past. I should take it for granted always that the propeller would have altered her course, and not run into the vessel. It is a hard question to answer. I would take it for granted that she was to alter her course. After I got close to the vessel, I could not have altered my course. I could not have gone farther to the starboard side, and certainly should not have gone to the other.

Ques. How long after you opened the Straight Cut was it before the collision?

Ans. Several minutes.

Ques. How long after you blew the second signal, before the collision?

Ans. It was a short time—long enough for a propeller, or the Alleghany, to run her length.

50 Do you menn so long as the Alleghany was running her length there at that time, or so long as you were closing the gap between the vessels?

Ans. The time the Alleghany was running her length.

Ques. How long is the Alleghany?

Ans. I could not tell exactly?

Ques. About how long?

Ans. I could not tell you the figures; I cannot reduce anything to feet or inches any how.

Ques. How long had you been in full view of the Alleghany, so as to see upon what course she had been running, before you blew the second signal?

Ans. From three to four minutes perhaps; it is very hard to fix these things.

Ques. Did the collission make much of a shock to the tug?

Ans. No, sir; I felt the strain of the lines, but not to any great extent.

Ques. How many seconds, do you suppose, after the collission did you see the propeller's rudder?

Ans. I did not see it all.

Ques. Did you not say yesterday that her helm was aport?

Ans. I did not say so of my own knowledge.

Ques. Which way did the men turn the wheel when you saw them turning it?

Ans. I thought the wheel was turned starboard, as the man stood on the starboard side; but I can only judge from the motion of his arms. I am not positive at all as to which way the wheel was going. I could not swear which way, but thought I was sure at the time. I thought the motion of the wheel was to send the vessel to the southward. It did not seem to affect her a particle.

Ques. How far was the propeller from the centre between the piers when you first opened the Straight Cut?

Ans. She was to the south of the centre about her width.

Ques. Do you know her width?

Ans. I do not; I should think a little over 30 feet.

Ques. How much water was she drawing?

Ans. I could not tell you; I did not look at her marks. She looked to be about half-loaded.

51 Ques. In towing out or in, do you give that shoal place any room, or do you run right up the channel?

Ans. In going out we have to make a turn, which throws us out to the south pier. In towing out we are usually nearer the south pier than the north. In towing in we go right ahead, the shoal place not being far enough of to be noticeable.

Ques. When you brought your tug around to face the Straight Cut as far as you did, did you not put steam on your engine to work full stroke?

Ans. No, sir; so far as I know, the engineer did not. I would have known it if he had. I gave him no orders to put on more steam. The engineer's name is John Steiner. He is on board the tug.

Ques. Did you not change or turn your wheel so as to bring the tug around sharply just a moment before the collision?

Ans. No, sir.

Ques. What was the direction of the course of the tug just at the time of the collision?

Ans. About south of east two points, I think. The Alleghany passed me just before the collision about 25 feet apart. We were running about the same course, about parallel, our distance not varying much as we passed. After the lines parted, I went right along; we were not running parallel lines at the time of the collision; we were making the turn, and they were coming up the river out of the piers. After the lines parted, I passed her stern about the same distance apart as we passed her bow.

Ques. Which way was your helm at the time of the collision?

Ans. Near midships. It was not over either way to any extent.

Ques. Did you change your wheel until after you passed the Alleghany?

Ans. No, sir; not to any extent.

Direct-examination resumed:

Ques. You were asked, on page 14, the following question: "When you saw there was a chance for a collision, did you change your direction?" Your answer is, "No, sir." Will you now state why you did not?

(Objected to.)

Ans. I was making every exertion to keep over untill it was unsafe to go farther. The turn was being made all the time from the time we commenced making it until the time of the collision, and we were as far south as we could with safety to the vessel.

52 Ques. What is the effect upon a propeller, when coming in from the deep water of the lake into the shoaler water of the harbor, about slacking speed?

Ans. Nearly all vessels steer badly, some of them worse than others. Some steer wildly in passing from deep water to shoal at the same speed.

Ques. What should they do to overcome that difficuly in entering a harbor?

Ans. It is necessary to check down.

Ques. Was not that collision the direct result of the improper management of the propeller?

(Objected to as leading, and as there being no foundation for it.)

Ans. I think it was, sir, most decidedly.

Ques. How often a day during the active season of navigation are you in the habit of towing vessels in and out of the harbor?

Ans. I have got out as many as twenty times, perhaps more, some days.

Ques. Is it anything unusual to meet vessels and propellers in the same locality you meet the propeller Alleghany, in towing vessels out of the river?

Ans. I have met them there frequently.

Ques. Is there any difficulty, and, if so, what difficulty, in passing vessels there, if the ordinary rules of navigation are observed?

Ans. I know of no difficulty whatever.

Ques. Does it not occur at times that three vessels get abreast between those piers without difficulty in passing?

Ans. Yes, sir.

Ques. How much room with sufficient depth of water was there between the track which the Alleghany took and the north pier, taking for the width of the piers 260 feet?

Ans. I should think at least eighty feet, without being in danger of getting on, or any danger of getting on what.

Ques. Getting on or in danger of getting on what?

Ans. Getting on the bar, a bank, or whatever it is called; and without danger of getting so near as to make her steer worse than she otherwise would; getting near the bar will make her steer worse.

Cross-examination resumed:

Not checking down sufficiently, so as to be able to manage the boat, was the mismanagement on board the Alleghany which occasioned the accident.

53 Ques. How much should the master of the Alleghany have checked her speed, in order to have managed her properly in coming in between the piers?

Ans. That depends upon the steering. I do not know whether she steers well or not ordinarily. I thought she steered badly that morning.

Ques. Do you know that the Alleghany was not going at the rate of speed at which she steers best?

Ans. I am certain that had she had been going slower she would have steered better.

Ques. How do you know that? Did you ever steer her?

Ans. I never steered her. I know it from studying the sailing of vessels in shoal water for some time, the rate of speed, and what effect it has on them.

Ques. Is the effect of shoal water on all vessels alike?

Ans. Sharp vessels steer better than flat-bottomed ones in shoal water.

Ques. Is there any uniform rule by which you get at the proper amount of steerage-way for vessels?

Ans. No; it is a matter of judgment.

Ques. What should you judge would be proper steerage-way for the Alleghany there?

Ans. That I could not determine. I should think she might steer, if she would go five miles an hour, in the creek. Possibly not.

Ques. What would be the proper steerage-way for the Alleghany?

Ans. I could not tell without being on board of her and seeing her move. I should move her fast, and keep on slower until she did steer well. Some vessels, in turning or moving in shoal water, have to have hausers to move by. Nearly all large propellers have to do this where there is not much room. The depth of water and closeness of the vessel to the bottom makes a difference in her steering. I cannot give the speed which was necessary and proper for the master of the Alleghany to use in coming up the river definately. I cannot give within two miles an hour.

Ques. Can you be sure, within three miles an hour, of the speed the Alleghany was going between the time of the collision and when you blew the second whistle?

Ans. I think I can.

Ques. At what speed was she going?

Ans. I think she was coming at least at the rate of seven
54 miles an hour at the time I blew the second whistle, and just before the collision; but whether she was going at that rate at the moment she struck, I cannot state.

Ques. At what speed do vessels of the class of the Alleghany ordinarily run in the lakes?

Ans. They usually go as fast as they can. I do not know her rate of sailing, but understand her usual rate of sailing to be 9 or 10 miles an hour.

Ques. If she was running 9 or 10 miles an hour outside, what would be the effect on her speed coming inside with the same amount of steam?

Ans. She would go slower. It would depend upon the build of the boat. It has more effect on some boats than others. I think she would go two miles an hour slower.

Ques. How long was it between the second whistle and the collision?

Ans. Very few minutes. I should not think it was over two minutes. I think it could not have been three. I should think it was more than one; I should think it was about two.

Direct resumed:

Ques. How long are you usually towing vessels the size of the Winslow from Walker's Point bridge to the pier?

Ans. I have but a small idea of the time.

Ques. When you speak of the time intervening between your blowing the second whistle and the collision as being two minutes or thereabouts, do you mean to be understood as testifying with certainty as to time?

Ans. No, sir.

GEORGE W. MADISON.

JOHN MCGILLVRAY, being duly sworn, deposes and says:

I am a sailor. I will be thirty years of age on the 2d of June next. I reside in the city of Buffalo. I was a sailor on the 4th of May last, and shipped on board and was second mate of the Henry C. Winslow, at that date. On the 4th day of May, the Henry C. Winslow lay at Plankinton's dock, below Huron-street bridge. We had a cargo of oats and pork on board. I noticed a tally of 19,800 bushels of oats on board; but how much more, I do not know, as I did not attend to the loading. There were 200 barrels of pork also
55 on board. We were towed by steam-tug W. K. Muir all the way from Plankinton's dock to the river. We went through Walker's point bridge safely. The vessel was in good condition then, and the men were getting the caskets from the sails to get ready for sea. We were bound for Buffalo. We were going all right along working toward the south pier, and we saw another boat entering the pier; she kept nearing all the time and not altering any, and some of the men said they were going to run into us. The tug then blew one whistle, and kept more to the starboard; then before she struck us, our vessel was heading off the pier about two points more to starboard than the tug. The boat immediately then struck us. Then the propeller backed out of her then, and the tug let go our bowlines, and then came alongside and tried to shove us to the dock before we would take bottom.

Ques. What did you do to get the vessel over to the north pier, before the tug got back to you?

Ans. We got a stern line out first of all, then got out the boat, and then got out a bowline and got her some over.

Ques. Where were you when the tug gave her first signal?

Ans. We were to the eastward of the bend.

Ques. How much room was there for the propeller to pass between your bow when she struck you and the north pier?

Ans. There was room for two large propellers.

Ques. How much nearer could you have got to the south pier than you were?

Ans. There might have been room for another vessel, but it would not have been safe to have towed another vessel between us and the south pier. I cannot tell what made the propeller run into us, unless they misunderstood. If I was out on the lake and a man should do it, I should say he did it on purpose; there was plenty of room. The propeller was running pretty fast at the time; I should say she was going about seven or eight knots.

Ques. Did she change her course at all to keep clear of you?

Ans. I don't think she altered a hair to keep clear of us; if she altered any, it was the other way.

Ques. Which propeller have you been speaking about?

Ans. The propeller Alleghany, of Chicago. I know her well; I used to wheel in her myself. She steers well, especially when light, and she was light when coming in. There are always two men at the wheel when entering a harbor. I saw the men at the
56 wheel in the pilot house when she was coming in; we could have heard the captain on board of her if he had sung out to the helmsman before she struck us. I do not think any order was given by the master on the pilot house to change her course. When the wheel is ported on a steamer the helm is port, and when starboard, it is starboard; the opposite way on vessels. Three or four turns of her wheel, had she been within two rods of us, would have thrown that boat three or four points from us, and at such a speed as that she was going. When she has speed, the least spoke would alter her mighty quick, and if slow it would not.

Ques. If a few turns of that wheel on that propeller to port would have brought her head right round to the north pier, how happened it that her stem struck your port bow?

Ans. Perhaps before he came within reach of us he had his helm astarboard and continued, the vessel going more to the south pier. I looked into the pilot house, and did not see any change until she went into us.

Ques. Which way was the propeller Alleghany swinging, and was it to port or starboard before striking?

Ans. She did not swing either way; we swung; our helm was hard aport to make her swing all she would swing to the south pier.

Ques. What more could you have done to keep more out of the way of that propeller than you did?

Ans. I don't think anything more could have been done, nor do I think any person living could have done more.

Ques. What could the propeller Alleghany have done to have kept clear of you?

Ans. She could have been slewed to the north pier, or they could have backed her. I should think they could have done either of that.

Ques. Did she do either?

Ans. No, sir.

Ques. What did she do?

Ans. She did nothing till she struck us, and then she backed out; that's what stopped her.

Ques. How hard did she strike you?

Ans. She struck us very hard, I think, as we were going very slow at the time.

Ques. Where did she strike you?

57 Ans. At the port bow, a little abaft the cat-head. She broke the anchor in two, and also broke off the stock at the same time. She broke the anchor in four pieces; we have got two pieces now. The stock is broke in two and the anchor is broke in two, making four pieces.

Ques. How far did she go into you?

Ans. I should think all of eight feet.

Ques. What became of the windlass bits?

Ans. Turned upside down, the windlass drove back against the forecastle scuttle.

Ques. How large was the hole she knocked into you?

Ans. I could not say; I should think about eight feet in breadth. The damage started farther than that. The injury is apparent on board the vessel now.

Ques. Did you see any other propeller coming in about the same time the Alleghany was coming on?

Ans. Yes, sir; the Maine; she did not come in until after our struggle was over; she came in after the tug drove us to the north pier.

Ques. Did you see the Maine lying-to out at the end of the harbor piers?

Ans. I took no notice of her until she came in.

Ques. How many signals did you hear from the tug before the collision?

Ans. I heard one; there might have been three. There was one whistle for the propeller to keep to starboard. I heard no whistle from the propeller, or any answer of any kind. She did not go to starboard when the signal was given.

Cross-examination:

I was at the wheel of the Winslow when she passed Walker's point bridge. I remained a little while, when the captain said he would take her, and I could help get ready for sea. I know where Kellogg & Strong's warehouse is; I could not tell whether I had the

helm opposite that or not. I had her a little while after getting through the bridge. The captain took the helm, and the rest of the sailors and the first mate helped me to get ready for sea. I helped to pull and work like the rest. We raised the foresail, fore-and-aft sails, before we got struck. The rest of the sails drop until we get out.

58 I got out the fore-and-aft foresail. All the crew were at work at that sail, four seamen, a boy, myself, and the first mate. We did not get that sail up before the tug blew the signal; the men all ran aft then. We did not get any sails loose but those. We got some loose but not up. It took all the crew to raise that foresail; there was nothing else to do at the time. The tug was ahead, and a good man at the wheel. We had got the sail part way up when we heard the tug whistle. The first mate was at work with us. It was quite a little while after we heard the whistle before the propeller came up to us; it was five minutes. We were going very slow, about two knots, at the time. We stopped raising sail when the propeller struck us. We had just time to take a turn and run aft.

Ques. How soon after you heard the signal did you take notice of the propeller?

Ans. Perhaps six or seven minutes; then I spoke to the man near me, and asked him why they did not back her.

Ques. How far was the propeller off when you spoke to the man?

Ans. Quite a little ways off. I could not say; at such a time a man could not make out precisely.

Ques. Do you think it was one or more lengths of the propeller?

Ans. I could not say. I would not like to swear to the distance. I do not know the length of the propeller.

Ques. What direction was the Winslow going at the time she was struck?

Ans. I do not know exactly; she was heading to the southward of southeast a good deal.

Ques. What direction was the Alleghany running?

Ans. I had better not say anything about the course, as I never paid any attention to the piers.

Ques. How nearly was she running the contrary course of the Winslow?

Ans. She would have run right straight across our wake.

Ques. If the Winslow was heading south of southeast, what course was the Alleghany taking?

Ans. I ought not to have said anything about the course, as I do not know anything about the river until after I get outside.

Ques. If the Winslow was heading south of southeast, what course was the Alleghany taking?

(Objection, that he assumes a course for the Winslow that is not in proof, the witness himself having testified that he did not

59 know the course of the Winslow or of the river, and the attempt to get a wrong course for the propeller is inadmissible, and sought to be introduced to confuse the court and witness as to the true cause of the collision.)

Ans. As I told you before, I know nothing about the course, and

will not, then, say anything about it. We have no course in a creek. I don't know what course.

Ques. How long were you steering on the Alleghany?

Ans. Four months. Captain Rice was master. She was running to Chicago. She belonged to Buffalo at that time. She used to draw, coming out of Chicago, 11 feet 6 inches. This was the year 1858.

Ques. How long before the vessel struck you had you opened the Straight Cut?

Ans. The vessel was about twice her length from the bend.

Ques. Whereabouts were you when you Alleghany struck you?

Ans All of two lengths of the vessel in the Straight Cut.

Ques. How long is the Winslow?

Ans. I do not know. She fills a lock in length in the Welland canal.

Ques. Where was the Alleghany when you first saw her?

Ans. I have already answered that. She was inside the pier a piece when we first saw her.

Ques. How far inside had she got?

Ans. She was not in far when I first saw her. I had no idea of her coming into us then; she was not in half-way. When I first saw her, he could have slewed her right round. She was a little ways in by the light-house. We had not opened the Straight Cut when I first saw her. I saw her just before I left the wheel. I could see two men at the wheel, when we got near enough so that we could see them; they had the windows down. I could see a good many passengers forward. I could see the captain on the pilot house. There was somebody on there to give orders. I did not hear the bell of the propeller ring at all; if it had, I could have heard, I think.

Ques. How fast did yon tow down the river?

Ans. We were going pretty fast. All of six knots when we were passing that bend, where you go into the Straight Cut, until we saw that the propeller was going to strike us. The propeller was then within a few feet of us, and the tug eased off and let us have the way we had. By going round the bend, I mean going from the river into the Straight Cut. We were going at six knots until we got within a few feet of the propeller, and then we eased up; but still the vessel had a good steerage-way by the way she had before.

Ques. Are you sure the Alleghany did not answer that whistle?

Ans. Yes; I am sure of it.

Ques. Was the Alleghany's engine going all the time you saw her?

Ans. I did not notice but she was going all the time. The Alleghany, I suppose, reversed her engine to get out of us.

Ques. At what speed does the Alleghany steer best?

Ans. The faster she goes the better she steers, and that is so with anything that floats. A steamer will steer better than anything that floats. When the Alleghany is deep-loaded she steers hard, as she drags, she drawing 11 feet and 11 feet 6 inches. I am not used to going in and out of this port so much as other ports. When the Alleghany ran into us she ought to have steered well; she was very

light. I have steered other propellers; she steers a good deal better than the Equinox, which I once steered. She steered as well as the Rocket. The Alleghany steers as well as the ordinary run of propellers when she is loaded. The Alleghany will average ten knots with steam and a fair wind.

Ques. Were you on the deck of the vessel, or on the bulwarks, at the time of the collision?

Ans. I was on deck; I could see forward on the deck of the tug; I think the lines were cast off after the collision. The lines were not cut, as I hauled them in myself and saw them. The foresail was not drawing at the time we struck. It hung right up and down. The air was very light; no wind at all, scarcely. The propeller was not long in getting out of the vessel. I was passing a line out of the vessel to a boat to go ashore, to get the vessel near shore. A man named William Ross took the boat ashore. He is a seaman. We had the boat just clear of the water, and we let her go by the run. We went to the north pier. The propeller, when she struck us, threw us that way. Our stern was a good way from the pier. We might as well have gone to the south pier, if it had not been for the Maine coming up. Our stern was full to the centre of the stream. The line was taken ashore and made fast. The stern did not go down for a long time.

Ques. How near were you running to the course of the piers when the propeller struck you?

Ans. Within four points of the course of the piers.

61 Ques. How many degrees is there in a point?

Ans. I don't know as I can answer that.

Ques. How many points between two courses running at right angles of each other?

Ans. Four points.

Ques. Are you sure that the Winslow was running four points from the course of the pier?

I should think it was four points.

Ques. Did you see the stem of the propeller after she backed out of you, and was she damaged much?

Ans. Her paint was scratched some, but nothing more, I think.

Direct examination resumed:

Ques. You have stated that the captain was at the wheel, and all hands busy getting the vessel ready for sea, on the way down the river in tow of the tug; what was the first mate doing, and where was he stationed?

Ans. He was forward, attending to the tug and watching the vessel forward; he might have given us a pull, but I think not.

JOHN McGILVRAY.

Further examination adjourned until May 11th, 1564, at 8½ o'clock a. m.

JAMES MITCHELL.

MAY 11*th*, 1864.

Parties met pursuant to adjournment, and complainant called—

WILLIAM ROSS, being duly sworn, deposes and says:

I am twenty-seven years of age; I reside in New York; I know the schooner Henry C. Winslow; I know the propeller Alleghany; I am a seaman by trade; on the 4th day of May, 1864, I was a seaman on board the Winslow, as a seaman; I saw the propeller Alleghany run into the Winslow; it was at the Straight Cut, when they were towing out; I think it was about seven o'clock; it was a fine bright morning; I saw the steamboat coming for us; I saw that she never altered her course from the time she passed the light-house and entered the Straight Cut until she run into us; I heard the tug-boat blow the whistle and keep over on the south side; our helm
62 was hard aport at the time that she struck us; the propeller had over seventy feet room to pass us on the north side; I should think it was over one hundred and fifty feet from the Winslow's bows, when the Alleghany struck her, to the north pier; there was nothing to prevent the Alleghany passing on the north side of us that I could see; to the best of my opinion, the Alleghany was going between six and seven knots at the time she struck us; I was never in this harbor before; I can't tell what was the occasion of this collision.

Ques. Could your vessel have got out of the way any farther, and which way?

Ans. She could not get out of the way any farther; she had not time.

Ques. When the propeller struck the Winslow's bow, how far was she south of the middle of the piers?

Ans. I could not say; she was to the south side of the centre.

Ques. What were you doing at this time?

Ans. Hoisting the mainsail up.

Ques. Who was at the wheel?

Ans. The captain.

Ques. Who was forward on the look-out?

Ans. The mate, Mr. Johnson.

Cross-examination:

At the time of the collision we had got about half-way in the piers, from the turn to the light-house; I can't be positive, that is my opinion; she might have been two or three yards either way, more or less.

Ques. Where were you when you first saw the propeller?

Ans. Standing on the jaws of the main boom; that is, about five feet from the deck.

Ques. When you first saw the propeller, where was the Winslow?

Ans. Just after we rounded into the Straight Cut I first saw her.

Ques. Where does the Straight Cut commence, do you think?

Ans. Where the privies are.

ues. Did the Alleghany blow her whistle that morning?

Ans. Not that I heard.
Ques. Did you hear the Alleghany ring her bells?
Ans. No, sir.
Ques. Did she work her engines all the time?
Ans. Yes.
63 Ques. What direction were you running when you first saw the Alleghany?
Ans. Running out the piers.
Ques. Are you sure your bow was 150 feet from the north pier?
Ans. I am not sure, a few feet more or less either way.
Ques. How far was your stern from the north pier?
Ans. About 70 feet.
Ques. What is the breadth of beam of the Winslow?
Ans. I don't know, should think about 40 feet.

WILLIAM A. ROSS.

JOHN TOWERS, being duly sworn, deposes and says:

I am 42 years of age; I live in New York; I am a seaman; on the 4th day of May, 1864, I was on board the schooner Winslow; I had been on board the Winslow since the 20th of April, 1864.

Ques. What were you doing on the morning of the 4th of May?

Ans. Being towed down the river; we were towards the mainmast setting the mainsail, when a man sung out that a steamer was going to run into us; I did not see the propeller before that.

Ques. Did she run into you?

Ans. Yes, sir.

Ques. Where was the Winslow when you first saw the propeller?

Ans. Shortly after we got around the bend, on the south side, after entering the Straight Cut.

Ques. Did you hear the tug signal the propeller?

Ans. I heard one whistle.

Ques. Did the propeller reply that whistle?

Ans. I heard no report from the propeller.

Ques. How far had you entered the Straight Cut when the propeller struck you?

Ans. Two or three times the length of the vessel.

Ques. About how much is the length of the Winslow?

Ans. I could not say; I suppose she is over a hundred feet, perhaps one hundred and thirty-five feet; I don't know, as I never measured her.

Ques. How near were you to the south pier when the propeller struck?

Ans. A good distance over.

Ques. Which pier was you nearest to?

64 Ans. We were nearest the south pier when she struck us, but afterwards we got over to the north pier.

Ques. Was there room enough for the propeller to have passed you on the north side?

Ans. Yes; the Winslow and the propeller were both south of the centre of the channel, the one going out and the other coming in.

Ques. What did she do when you gave her the whistle?

Ans. She appeared to pay no attention to it, but kept straight on.

Ques. What speed was the propeller coming at when she struck you?

Ans. Six or seven knots an hour, I should say; she was going a pretty good jog.

Ques. Was her engine working at the time she struck you?

Ans. Yes, sir; her headway was not stopped; we fetched her up.

Ques. What was there to prevent the propeller passing on the north side, clear of you?

Ans. Nothing, if she had managed right.

Cross-examination:

Ques. How long did you see the propeller before she first struck you?

Ans. About six or eight minutes.

Ques. Where was the propeller when you first saw her?

Ans. About one hundred and fifty yards inside the light-house.

Ques. Did you see her exhausting steam?

Ans. No, sir, I did not.

Ques. How did you know her engines were going then?

Ans. By the way she had on; that was the only thing I had to go by.

Ques. Did you see any one on the deck of the propeller?

Ans. I can't say for certain.

Ques. Have you any recollection of seeing any lady on the propeller?

Ans. No.

Ques. How fast were you going?

Ans. Between three and four knots an hour.

Ques. How fast were you coming down the river?

Ans. After we got through the bridge we kept all the way at the rate of three or four knots an hour, everything being clear.

65 Ques. Did you pass a line from the stern of the vessel to the shore?

Ans. No; I passed it to a man in the boat.

Ques. How far were you from the pier when she struck you?

Ans. After we were struck, and I went aft to lower the boat, we were forty or fifty feet from the north pier. She was sunk when I got aft to lower the boat.

Ques. How much did the Winslow move up the stream when the propeller struck her?

Ans. Not at all; she drove right across the stream then.

Ques. How long after the propeller struck the Winslow before she grounded?

Ans. Between ten and fifteen minutes.

Ques. Did you go to the forecastle before you went to lower the boat?

Ans. Yes, sir.

Ques. How much water was there in the forecastle when you got there?

Ans. One man jumped down and it took him near to the neck, and I did not try it.

Ques. Which way were you heading when the propeller struck you?

Ans. Heading out.

Ques. You said that there was nothing to prevent the propeller going past if she had been managed right. How was she not managed right?

Ans. If they had put her helm aport, she would not have run into us.

Ques. Do you not knew her helm was aport?

Ans. If her helm was aport she would have gone right. She would have gone clear, for she had steerage-way enough to have gone any way.

Ques. How long have you been a sailor?

Ans. About 23 years.

Ques. Have you been used to running into this port?

Ans. I was never here before.

Ques. Do you recollect observing the course of the Winslow and the propeller, and there situation between the piers, just before she struck?

Ans. I saw we were on the south side of the river. I heard remarks passed after she struck us; as, "Why the hell did he not keep his own side?" I was a stranger, and did not understand the rules.

66 Ques. Is your recollection of the situation of the vessels after they struck better than that of before?

Ans. Yes, because we had a longer time to look at them.

Ques. How long after you were struck did you get a line fast to the shore?

Ans. The first line parted. She was sinking fast forward, and sheering aft, and the motion of the two steamers made it rough, and there was a strain on the line, and it parted.

Ques. Did the Winslow drift out any?

Ans. I could not say; I can't say whether she did or not. She could not drift after we had lines ashore, and aground. I was too busy; I could not tell whether she drifted or not.

Ques. Did she drift much, if any?

Ans. I don't think she drifted any out.

Ques. Have you got a recollection of the position of the vessels as to the piers before they struck, distinct from your recollection of their situation as to the piers after they struck.

Ans. I think I have got the position of the vessels in my mind before they struck as well as after they struck, clear and distinct.

Direct resumed:

Ques. How far, or about how far, was the Winslow driven north across the channel by the blow from the propeller?

Ans. I should have thought, from the position of the vessel when I went aft, that she must have been driven at least five points, as she was heading out when she was struck, and after she was struck she was lying clean across, heading out a little.

JOHN TOWERS.

WILLIAM POWER, being duly sworn, deposes and says:

I am about 47 years of age. I reside in New York. I am a sailor. I have been a sailor 27 years. I was on board the Winslow the 4th day of this month. She was then lying at Plankinton's dock, and was towed down to the Straight Cut. We were rounding the cut, and were in the act of hoisting the mainsail, when I saw the propeller coming in the Straight Cut just past the light-house. A few minutes after that, and perhaps the vessel might have been a couple of lengths of herself past the corner of the Straight Cut, I saw the propeller coming right for us; she did not apparently alter her
67 course; I passed the remarkto one of the men as we were hoisting the halyard that that propeller would certainly strike us. Another moment or so she struck us.

Ques. How far were you into the Straight Cut when the propeller struck you?

Ans. There are a couple of small offices at the nearest end of the Straight Cut, and we were probably a couple of lengths of the vessel passed that when the propeller struck us; close to that place, at all events.

Ques. Where did the propeller strike you?

Ans. About the port cat-head.

Ques. Were you nearer to the south than the north pier when the propeller struck you?

Ans. More to the south than the north pier.

Ques. Was there room enough between the Winslow and the north pier for the propeller to have passed clear of you?

Ans. Plenty.

Ques. What was the reason the propeller ran into you if she had plenty of room on the north side?

Ans. I can't tell you, sir.

Ques. Did the tug signal the propeller?

Ans. I heard the tug blow the whistle, but do not understand the signals.

Ques. Did the propeller reply?

Ans. I did not hear her.

Ques. Did the propeller change her course when her whistle was blown?

Ans. Not that I could see.

Ques. About what speed was she coming when you first saw her?

Ans. Between seven and eight knots.

Ques. About what was her speed when she struck you?

Ans. About the same.

Ques. What was there to prevent the propeller passing in the Straight Cut, between the Winslow and the north pier?

Ans. Nothing.

Ques. How far was the port bow of the Winslow from the north piers when the propeller struck her on the port bow?

Ans. About 170 or 180 feet.

68 Ques. About how far was her stern from the same pier?

Ans. Not so much; her bow was farthest off. It might be something over 100 feet; 120 feet, perhaps.

Cross-examination.

Ques. what where you doing when you first saw the Alleghany?

Ans. Raising sail.

Ques. Whereabout on the vessel were you?

Ans. At the mainsail.

Ques. Had you, before that, got the foresail up?

Ans. Yes.

Ques. How far in in the piers was the Alleghany then?

Ans. Just coming in at the turn.

Ques. Whereabouts was your vessel then?

Ans. Just at the corner going in to the Straight Cut.

Ques. How fast were you going?

Ans. Between three and four knots an hour.

Ques. Did you notice whether there was anybody on board the propeller?

Ans. I did not notice.

Ques. How far is it between the piers?

Ans. Can't tell exactly, perhaps over 200 feet.

Ques. How much over?

Ans. Can't tell. I don't know if it is 300 or 400 feet.

Ques. How long is your vessel?

Ans. I don't know.

Ques. About how long?

Ans. She might be 100 feet or 120 or 130 feet.

Ques. Do you know what beam your vessel is?

Ans. No.

Ques. Can you tell pretty near?

Ans. She might be 25 feet or 30 feet, perhaps more and perhaps less.

Ques. How far had you run into the Straight Cut before the propeller struck you?

Ans. Perhaps twice the length of the vessel.

Ques. Did your vessel move down toward the lake after the propeller struck you?

Ans. After the propeller struck the vessel, the vessel went astern; can't tell which way she went after that. I was about the

69 mainmast when the propeller struck the vessel, perhaps thirty feet from her bow.

Ques. Which way were you heading when the Alleghany struck you?

Ans. Heading out to the lake.

Ques. How far was it from where you stood to the north pier, where the vessel struck you?

Ans. Seventy or eighty feet, or thereabouts.

Ques. Did you go forward when the propeller backed out of you?

Ans. I saw forward just as she was backing out to see what damage was done. It was perhaps a couple of minutes or three after she was struck before I went forward.

Ques. How far was it to the south pier from where you stood when the vessel struck you?

Ans. I can't say how far.

Ques. About how far?

Ans. It might have been about half the breadth of the channel from where I stood at the mainmast to the south pier.

Ques. Was the engine of the propeller going when she ran into you?

Ans. I don't know. I know she was going ahead.

Ques. How far was it from the vessel's starboard bow to the south pier when the propeller struck her?

Ans. It might be a hundred feet or over; I guess it was not a hundred feet, but I can't say.

his
WILLIAM × POWER.
mark.

MAY 25*th*.

Parties met, and examination proceeded.

SAMUEL WILLIAMS, being duly sworn, deposes and says:

I reside at Oakville, Canada West; I am in my 38th year of age; I am a mariner; I am master of the schooner Minnie Williams; the home port of my vessel is Oakville; I was on board of my vessel on the morning of the fourth day of May last; I was on deck; the vessel was then laying at the sand dock where we put out our ballast; I don't know the name of the dock; we were near Kellogg's elevator, but below it; we were above the steam mill, and about half way up between that and the next building; I saw the schooner Henry C. Winslow pass down on the morning of the fourth of May, between seven and eight o'clock, in tow of a tug; they were hugging the south side of the river as they passed down; I saw the propeller Alleghany come in at the harbor piers that morning; after the Winslow passed us, we saw the propeller coming in on the north side of the river, and, when at the bend, strike the vessel on her port bow; I did not notice them reverse the engine until close on the vessel, and when too near to avoid a collission; at least, from the distance I was, I could not discover that they attempted to reverse the engine until too late to avoid a collision. The schooner Winslow was nearest the south pier when the collision took place, I should judge, from the distance she was from us going down. She must have been nearest the south pier, from the direction she came past us.

Ques. Where, with reference to the knuckle of the bend, in pass-

ing from the river to the harbor piers, was the Winslow when the propeller ran into her?

Ans. I should judge from one to two hundred feet below the knuckle, and well to the south side, probably not so far.

Ques. Was she in the usual track of vessels going out?

Ans. She was, but she had not got straightened out in the Straight Cut, but she was going on as nicely as could be.

Ques. With what speed was the propeller Alleghany coming in?

Ans. She was going at the rate of six or seven miles an hour, any way, perhaps more; she was racing any way.

Ques. how hard a blow did she strike the schooner?

Ans. She made the splinters fly beautifully; that is all I can tell you.

Ques. After the tug passed you in the river, did you hear her signal the propeller?

Ans. I think she signalled her before she passed me.

Ques. What was that signal?

Ans. One loud whistle.

Ques. Did the propeller reply to the signal?

Ans. I did not hear her.

Ques. Should you have heard her reply signal if she had made one?

Ans. I should think so; I do not know why I should not.

Ques. How far can these signals ordinarily be heard?

Ans. A good deal depends upon the weather; from a mile to three miles.

Ques. What was there to prevent the propeller from passing on the north side of the channel of the harbor, without coming in collision with the Winslow?

(Objected to.)

71 Ans. Nothing that I could see, unless she was unmanageable.

Ques. What did the propeller do to avoid that collision?

Ans. I can't say. He might have been doing the best in his power, but from where I was standing I could not see that he was doing anything.

Ques. Did they slack their speed from the time they entered the harbor piers until they struck the vessel?

Ans. Yes, I think they did.

Ques. When?

Ans. I should think she was two or three hundred feet inside the piers when she slackened her speed. It may have been imagination on my part, but I thought she was not going so fast as when she entered the harbor.

Ques. Did the Alleghany that morning enter the harbor at the usual or unusual rate of speed of propellers entering the harbor?

Ans. I do not know at what rate they enter the harbor; some come in very fast, others more moderate. I never ran a propeller, and do not know the usual rate of speed.

Ques. What rate of speed do you call fast and what moderate?

Ans. When a propeller comes in eight knots an hour, that I call fast; and when four or five knots an hour, I call that moderate.

Ques. You have stated in your testimony that the Alleghany was racing when she came in the harbor; with what was she racing?

Ans. A propeller that was coming right after the Alleghany; and when the collision took place, the other propeller stopped outside, and when the Alleghany backed out of the vessel, the other propeller came right in.

Ques. Did the propeller Alleghany change her course at all coming up the river?

Ans. I should not think she did, at least I was not watching her at that time. At the time of the collision, when she began to reverse, that threw her head more to the south.

Ques. Was her head in that position when she struck?

Ans. Yes.

Ques. If the propeller Alleghany had been coming into the harbor at an ordinary rate of speed, and they had commenced reversing the wheel when the propeller was two or three hundred feet distant from the vessel, need that collision have taken place?

72 Ans. I think not.

Ques. What could the schooner Henry C. Winslow, in her then position, have done to prevent the collision?

(Objected to.)

Ans. I did not see that she could have done anything under present circumstances, ready for sea, boat hoisted up, tug ahead, foresail up, and mainsail partly set.

Ques. What could she have done if she had not had any sail?

Ans. Nothing more than she did do, steer out of the harbor.

Ques. How do you account for that collision?

(Objected to.)

Ans. I should call it sheer carelessness on the part of the propeller, if I am allowed to be the judge.

Cross-examination:

Ques. Which did you see first, the Alleghany or the schooner Winslow?

Ans. The schooner.

Ques. Where did you see her first?

Ans. Towing down by my schooner in the river.

Ques. How long after you saw her did you see the Alleghany?

Ans. Perhaps not five minutes. Not to exceed five minutes. I washed myself and went down to the cabin, and do not think it could have been more than five minutes, but about that. I made the remark as I was going down the cabin "that there would be a collision." I wiped myself and combed my hair when I went into the cabin. I was on deck at the end of my cabin when the collision took place.

Ques. How long were you on deck after you had combed your hair before the collision?

Ans. I was on deck just before the collision. I saw her when she

struck the vessel; I heard what I took to be the reverse wheel of the propeller before she struck.

Ques. How long after you heard that first reverse before she struck?

Ans. I think not half a minute. There were no vessels between us and the Straight Cut at the time of the collision.

Ques. How many rods were you above the Straight Cut?

Ans. I should think three or four widths of the river up from the knuckle.

73 Ques. Were you so that you could see out the Straight Cut between the piers?

Ans. No.

Ques. Was your vessel light, and setting well out of water?

Ans. Yes.

Ques. Did the tug signal the Alleghany before you went down in the cabin?

Ans. Yes.

Ques. When you first saw the propeller, was she in or out of the piers?

Ans. She was just entering.

Ques. How many lengths was the propeller in when you first saw her?

Ans. Not a length at all.

Ques. How fast was the Winslow running when she passed you?

Ans. Three or four miles an hour, with the wind well out of the river. She had her foresail set, and commencing to get up her mainsail as she got abreast of me.

Ques. Was her foresail drawing when she passed you?

Ans. Yes; wind a little forward of the beam when she passed me.

Ques. How far inside of the piers did the Winslow ground?

Ans. A couple of hundred feet, any way, from the knuckle when she sank, probably more.

Ques. What do you mean by the knuckle?

Ans. I mean the bend or curve of the river at the point on the north pier where they turn to go into the Straight Cut.

Ques. Did you ever steer the Alleghany?

Ans. No.

Ques. Do you know how much water she was drawing at that time?

Ans. No.

Ques. How far was it from the Winslow's starboard bow to the south pier when she was struck?

Ans. I should say she was nearer to the south pier than the north; that is as near as I could tell from where I was standing. We had the Straight Cut completely shut in from where we were standing, so it is mere imagination as to the distance.

Ques. What makes you say the Winslow was nearer the south shore than the north?

74 Ans. It is customary from vessels going down to keep nearer the south side, in order to avoid the knuckle; vessels

cannot avoid doing it very well; I know I can't; I have had charge of vessels steering out and in here several times.

Ques. Is there any trouble in getting over to the south pier if you want to?

Ans. Not as I know of. The way the river runs, and the way we run to get out, we keep to the south side of the river, so as not to give such a short turn.

Ques. Is not the difficulty in steering out rather to keep away from the south pier than to go up to it?

Ans. Yes; we have to get straightened up as soon as possible when we got into that bend.

Ques. Is a vessel in running out from here in charge of the tug principally?

Ans. We consider her in charge of the tug until she lets go of us, but we do our best to steer after her. I was never master of a propeller, nor never run in one.

Ques. What makes you think that the exhaust that you heard when you came out of the cabin just before the collision was the first one after the reversing the engine?

Ans. Because it was the first noise I heard from the propeller; she made so much noise exhausting.

Ques. Did she work her engine rapidly?

Ans. I should say she did. By turn of the wheel, in my direct examination, I meant the first exhaust of steam.

Ques. What makes you say the Alleghany was racing?

Ans. I should judge from appearance; that is all; the propellers were coming up fast; the propeller that collided was coming up very fast; I could not say whether the other was coming up with her or not.

Ques. Is there anything in the sound of an exhaust of an engine by which you are enabled to determine whether the engine is going backward or forward?

Ans. No.

Ques. So that the only reason you have for saying that the Alleghany reversed her engine was that she exhausted so rapidly and so noisely?

(Objected to.)

75 Ans. No. I judged that she was getting so near the schooner that she was trying to get out of the way as rapidly as possible.

Ques. Are you familiar with the working of steam-engines at all?

Ans. No.

Ques. Do you know how wide the channel is between the piers?

Ans. No.

Ques. Do you know how much water the Winslow was drawing?

Ans. No; she was loaded, but not very heavily, I should judge.

Ques. What was there to prevent the tug from taking the Winslow fifty feet to the south of where she was when she was struck?

Ans. I could not tell that there was anything.

Ques. With a steerage-way of four miles an hour, how far would

the tug need to have run to have given the Winslow a sheer of fifty feet out of her course if the Winslow and tug were both steering well?

(Objected to as immaterial.)

Ans. I do not know whether the schooner is quick or slow with her wheel. That is something a man is not versed in. A man has got to know how his vessel acts. Some will come round in once their whole length, and others take two or three times their length.

Ques. If she answers her helm quick, how far would she have to go?

Ans. If she answers quick she would veer four points in twice her length any way, but she is not a better steering vessel for doing that.

Ques. How many feet would that take her out of her course in running that distance?

Ans. I can't tell. She would just veer four points.

Ques. Don't you know how to calculate it?

Ans. No, I do not.

Ques. How many degrees are there in a point?

Ans. I do not know.

Ques. What do you mean by a point?

Ans. Start it north. North and by east, that is one point. North-northeast, two points. Northeast and by north, three points. Northeast is four points. Thirty-two points in a compass.

Ques. Can't you give any kind of an idea how many feet a vessel that minded her helm readily, and was running four miles an hour, could be got away from her course in running twice her length?

(Objected to as immaterial, the vessel then being in her proper track, and no collision being imminent or necessary until the
76 propeller came, she close down on the vessel, the vessel being in tow of a tug, and to starboard of the tug, it was impossible for her to do anything.)

Ans. I could give no accurate statement for many reasons. 1st. The vessel running by the wind, it is not easy to get her to windward, and the wind was forward of the beam, if he could have got further to the southward. Consequently he could not do it so quick as if the wind was after him. In tow with the tug we would naturally suppose that the tug would take her out of her course quicker than she could be got out of it under canvass.

Ques. If the vessel was in tow of a tug, as the Winslow was that morning, how far could the tug have got her out of her course in running twice her length?

Ans. In twice her length she could have run her on the south pier, if there was water to let her go there.

Ques. How was the wind blowing that morning?

Ans. South-southwest, I think; but I did not look at the compass.

Ques. Would that have brought it forward or abaft the beam at the time of the collision?

Ans. About abeam.

Ques. What was the course of the Winslow at the time of the collision? How was she heading?

Ans. I cannot say accurately, but should say south-southwest; I should say that was the way she was heading, probably to the southward of it.

Ques. Which way do the piers run?

Ans. Nearly north and south, I think.

Ques. Was the tug working her engine at full stroke when she went past you?

Ans. No, I should say not. I have seen her go faster with a vessel.

Ques. When you first saw the Alleghany, was she working her engine?

Ans. There was nothing to give any token of it. There was no walking beam.

Ques. Was there any one on the pilot house when you first saw her?

Ans. There was some one there.

Ques. Was there men at the wheel?

Ans. I could not see them. The Alleghany was coming right in between the piers when she struck the Winslow.

77 Ques. How much did the Alleghany change her course when she reversed her wheel?

Ans. A point to two points. I think she changed her course as much as a point.

Ques. Did you see the splinters fly at the time of the collision?

Ans. Yes, I took it to be the rail and cat-head.

Ques. How fast was the Alleghany running about a minute before the collision?

Ans. About six or seven miles an hour, probably not so fast. They seemed to come together pretty fast; that is the way I should judge.

Direct resumed:

Ques. If the piers run east and west, or nearly so, what course would the vessel be heading from her position between the piers at the time she was struck?

Ans. From east and by south to east-southeast, that would be the farthest southward she would be if the piers ran east and west.

Ques. How would the wind be?

Ans. South-southwest to southwest, I should judge.

Ques. You stated that the propeller, just before she struck the Winslow, veered from a point to two points; in which direction, to or from the Winslow?

Ans. Towards her, more to the southward.

Ques. In turning the knuckle of the bend in entering the channel between the harbor piers from the river, if the tug should keep too close to the south pier, where would the vessel in tow bring up?

Ans. On the south pier or on the bottom.

Ques. How is that avoided?

Ans. Keeping the vessel in the channel.

Ques. Is that necessary in passing out there, to avoid the piers?
Ans. Yes.

Cross-examination:

Ques. How close could the tug go to the pier and not be too close, if there there was water enough, that is, too close to get the vessel out?

Ans. She could go alongside of it if she did not run the vessel's stem on.

78 Ques. Is there any particular channel between the piers?
Ans. Not as I know of.

Ques. What did you mean, then, by saying it was necessary to keep the vessel in the channel in going out?

Ans. They tell me the centre of the river is the best water. That is, I am told so. I inferred it was necessary from what I have been told.

Direct resumed:

Ques. You have stated that a tug in passing out might keep along the south pier if there was water enough. Suppose a tug, in making the turn of the knuckle in passing in between the piers, should keep close along the south pier, would not the vessel in tow be necessarily and unavoidably brought into the south pier before she could be straightened up?

Ans. If the vessel steers quick, and answers her helm qnick, she would straighten up, but if she did not do so she would not; she would go into the pier.

Ques. Did you ever see the tug in towing a vessel out, in making the turn of the knuckle of the bend, run close along the side of the south pier?

(Objected to.)

Ans. No.

Ques. Was the tug that had the Winslow in tow, on the morning of the collision, and at the point of collision, in the usual track taken by it in towing vessels out?

(Objected to.)

Ans. Yes, I should think she was.

S. WILLIAMS.

JOHN KIVELL, being duly sworn, deposes and says:

That he is second mate of the Minnie Williams. I am in my 38th year. That on the morning of the 4th day of May last he was on the deck of said vessel in the Milwaukee river, and witnessed the collision between the propeller Alleghany and the schooner Henry C. Winslow. That he has heard read the deposition of S. Williams, the master of said schooner Minnie Williams, and adopts the same as his diposition herein, with the following additions to it: "That the tug, after passing their said vessel in the river, gave a second signal to the propeller, which signal was not answered by the propeller, as heard by the witness."

his
JOHN X KIVELL.
mark.

79 By consent of parties, the deposition of S. Williams is stipulated between the parties to be read herein as the deposition of John Kivell, except as above stated by said Kivell.

JAMES MITCHELL,
Commissioner.

SEPTEMBER 19*th*, 1864.

Parties met.

MARTIN JOHNSON, being duly sworn, deposes and says:

I am 28 years of age. I was the mate of the bark Winslow on the fourth day of May last. I was on board of the Winslow that day. It was a little after seven o'clock in the morning that we came down the river in tow of the tug W. K. Muir. After we passed through Walker's point bridge, the captain gave orders to hoist the foresail, and I ordered the second mate to hoist it up, and I stood forward looking after the tow-lines. I stood on the top of the windlass. When we were between Person's warehouse and the steam mill, the tug gave his first whistle. There was no reply to that signal from the Alleghany. As we came down the river, and as we were opposite the figures "66," we were about the centre of the river, as on map marked "D;" then we bore over a little to the south shore; when we were at the angle of the centre lines, we were a little north of the intersection of the lines; then we bore farther to the south; and when we entered the piers, the vessel's head was eighty to ninety feet from the south pier; we were heading right into the south pier as we entered the piers; it was not safe for us to go any closer into the south pier, for if we had we should have run into the pier; when we were between the piers, the Alleghany ran into us; I should think we were eighty or ninety feet from the south pier when the Alleghany ran into us; our helm was hard aport at the time; I was on the look-out that morning at the time; there was nothing to obstruct my view from where I stood on the windlass; in going out we have to take the starboard-hand side of the center; we were as far south as vessels are when going out; I think we were going a little over three and not four knots that morning going out; the Alleghany was between the piers coming in when I first saw her; the first time I saw the Alleghany I know she was not north of the centre of the river, but near the centre; I first saw her after she had got inside east of the harbor piers, about the centre of the cut; she was about the center between the piers; then in coming up she kept hauling to the southward up to the time she struck us; she did not
80 change her course at all when we signaled her; I think when I first saw the Alleghany, she was going about six miles an hour; I think she was going between four and five miles when she struck us; she struck us a little abaft the port cat-head; she made a hole in the vessel; we sank about ten minutes after we were struck; there was nothing to prevent the propeller from passing us on the north side; I do not know why she did not do so; we were five hundred or six hundred feet from the propeller when we blew the second whistle; she did not answer our second whistle.

Cross-examination:

I have been a sailor about fifteen years. I have been two years mate. I shipped on board the Winslow last spring. I never had been in her before. I should think I was standing about five feet above the deck. I believe the gaskets of the head-sails were loose, but they were not spread out. I first saw the Alleghany when we were nearing the bend. When I went forward to look at the lines, we were above the bridge; we had two lines out to the tug; they belonged to us. There was 14 or 16 fathom in each line. The tug was that far from the vessel, I mean that was the length of the lines. The tug was just clear of the jib-boom. I was nine or ten feet above the deck of the tug. I suppose the tug whistled to give the signal that she was coming out with a vessel. The vessel drifted to the north pier after the collision. The tug tried to shove her over. The vessel drifted out to the lake after the collision. I should think she drifted her length or a little more. She grounded ahead first. When she grounded her head was about a hundred feet from the north pier and her stern about ten feet. I stood on the starboard side of the vessel as we come down the river. I was abreast the foremast at the time of the collision. I saw the propeller before the tug blew the second signal. It was about five minutes or so from the blowing of the first signal until the blowing of the second. It is a thing I could not be very sure of. I am sure we were below the brown warehouse. The second whistle was blown after we got below the steam-mill. I have been a good many times out and into this harbor. When we left Walker's point bridge we kept in the track of the river usually taken by vessels going out. The port side of the vessel was over 150 feet from the north pier at the time of the collision. The vessel was heading about southeast at the time of the collision. Cap-
81 tain Wells was steering. I looked at the helm afterwards and saw it hard aport, and about three minutes before the collision I saw the captain put her hard aport; the helm was aport before. The Winslow steers first-rate. She steers quick, and answers her helm every time. I think the Winslow was drawing a little over nine feet. I did not see the propeller until I could see clear out of the piers. About three-fourths of the way from the steam-mill to where we struck, I saw the propeller. The tug did not let go of our lines until we struck; neither of our lines parted. I can't tell how far the propeller was in between the piers when I first saw her; she was not half-way in.

MARTIN JOHNSON.

The foregoing witness travelled from Chicago to Milwaukee, and was in Milwaukee two days.

Further examination adjourned until Sept. 20, 1864, at 2½ o'clock p. m.

JAMES MITCHELL.

Parties met pursuant to adjournment.

WILLIAM W. WELLS, being duly sworn, deposes and says:

I reside in Ohio. I am 43 years of age. I am a sailor by occupation. I have been a sailor 26 or 27 years. I have sailed in all capacities, from boy to master. I have been master 15 years. James E. Pitman and Sarah A. Wolverton reside in Detroit. They are known in the papers as owners of the vessel Winslow. I was on board the schooner Winslow on the 4th of May last as master. I went on board as such master on the 14th day of April last. I had a cargo of 19,450 bushels of oats on board, 200 barrels of pork. I had nothing else on board. I understood the oats belonged to Bernard Goldsmith; he was the shipper. On the morning of the 4th day of May last we were lying at Plankinton's dock, at the foot of Huron street bridge, bound for Buffalo. About seven o'clock in the morning the tug Muir came alongside, and took hold of us to take us down the river. We passed through Walker's point bridge all right. Soon after passing by Kellogg & Strong's elevator, I noticed two propellers outside of the harbor piers. About a third of the way down from Person's warehouse toward the steam mill, the tug blew its first whistle. It might have been half-way between Person's warehouse and the steam mill. I don't think the Alleghany was between the piers when the tug first signalled. I think she was just outside, though I could not see her position exactly from where I stood. We passed along down
82 the river, until we got some distance below the steam mill. I can't exactly say how far. I think when the second whistle was blown, we were just at the bend below figures "66" on Exhibit D. The Alleghany was then fairly in at the mouth of the piers. Our vessel was to the southward of the centre of the river all the way down from Kellogg & Strong's. We were in the usual track of vessels towing down the river. It is not the usual track to tow down the north side since I have sailed in this port. We were passing within twenty-five feet of vessels laying alongside of the dock as we were going down. The collision was before the Winslow entered the harbor piers at all. The Winslow, at the time of the collision, was heading for the west end of the south pier. The Winslow's bows was seventy-five feet north of the west end of the south pier, where letter "G" is marked on Exhibit D, at the time of the collision, heading about south-east, or nearly so. Just as the collision took place, I took particularly notice of the position of both vessels, and the bow of the Winslow was at least 160 feet from the north pier. I think that the vessel delineated on Exhibit D is about the location of the Winslow at the time of the collision. The Alleghany was laying nearly parallel with the south pier; she was running right along up. There is no doubt about that. There was no time when I saw her that she was not to the southward of the centre of the piers. I should think she was two-thirds of the way from the north pier to the south pier, perhaps more. I noticed her particularly. I could not judge within a mile or two how fast the Alleghany was coming in. I should judge about six miles an hour. My impression is that

she was going at least four knots an hour when she struck us. I don't think the Alleghany responded to either of the signals from the tug. I did not hear her. I should say the whistle could be heard at least two or three miles distant on such a morning as that was. The Alleghany could have done one or two things that morning to have avoided that collision. He could have stopped his boat down between the piers altogether, until we got straightened up in the cut, or he could have passed us to the northward on our port-hand side. At the time the collision became inevitable I do not know of anything we could have done to have avoided the collision. Had I known of it, I might have run down the old channel. I don't know what the cause of the collision was. One cause was, his not steering his boat clear of us. Another was, his not stopping. He ought not to have been so far over on the south side on meeting a vessel towing out.

Ques. Should he have approached a vessel straightening up
83 in the knuckle of the bend with the speed you have stated he was approaching you; and if not, why not?

(Objected to as leading.)

Ans. I should think when he saw us, if he did as he ought to have done, backed out, and stopped his vessel altogether, until we got straightened up between the piers. I was aft at the time of the collision. I was standing at or near the wheel at the time of the collision. I was standing on the cabin with my hand on the wheel.

Ques. If you were in that position with your hands on the wheel, will you tell us whether your vessel could have been kept farther over to the south pier? If yea, how; and if not, why not?

(Objected to as leading.)

Ans. I can only say that we had been following the tug all the way down, and I did not think it necessary to go closer to the south pier, as I knew there was plenty of room for the propeller to pass us to the northward, and the tug run as close to the west end of the south pier as he dared go before straightening up. And I saw that the propeller was going to come very close to us if not touch us, that I ported the helm, which kept the vessel to the starboard hand of the track of the tug. Just before the vessels came together, I put the vessel's helm hard aport, which carried her still further southward.

Ques. What, if anything, did the Alleghany do to avoid the collision?

Ans. He did just before the collison what he ought to have done sometime before; he stopped his engine twenty-five or thirty feet before the collision; that is, when the vessels were twenty-five or thirty feet apart. I did not see that he did anything more. I can't say which way the helm was, but I noticed when she commenced backing on the engine, just before the collision, she still canted to the southward; whether from the effects of the helm or wheel, I can't say, as I have never sailed on a propeller.

Ques. What effect did the stopping of the engine and the reversal of the wheel, when within or about twenty-five feet of you, have on the speed of the propeller before she struck you?

Ans. It would have very little effect on a vessel like the Alleghany

in that distance. I don't know whether the Alleghany was working full stroke all the way up the piers or not; her engine was working ahead until within twenty-five feet or thirty feet of us. No doubt about that. The vessel ran into us considerable.

Ques. Will you state where she struck you, the course she
84 came into you, and how far she came in board?

Ans. She struck us just abaft the port cat-head; from where the propeller's stem struck the rail of the vessel where she brought up in board was about eight feet. The stem of the propeller struck the small anchor lying on the rail, breaking it in four pieces, cutting away the rail, plank sheer, breaking both windlass bits, and five heavy oak beams. And there were either four or five of her frames broken, and cutting down through twelve or fifteen streaks of outside plank, cutting the ceiling, bilge kelsons and arches, tearing up the deck, and springing the neck of the windlass. The result of the collision was the sinking of the vessel. The cargo was all damaged; that is, the oats were. The vessel was raised again and repaired. I know about what it cost to repair the vessel and get out the cargo and get up the vessel. I knew of the bills as they came in, but I never footed them up. It was in the neighborhood of five thousand dollars, I think.

(This taken under objection.)

Ques. Were you present, and did you personally superintend the raising of the vessel, the discharge of the cargo, and the repairs of the vessel?

Ans. I superintended the whole thing, and was present all the time.

Ques. Do you know what it cost to get her up, and get her cargo out for repairs, and get her to the dry dock?

(Objected to by respondent.)

Ans. No, I can't tell. I paid part of the bills, and part I did not; whatever bills I certified to are correct.

Ques. What do you know of Michael Conner, the diver's bill?

(Objected to by respondent.)

Ans. I understood at the time that he was to have $200. I did not understand he was to have anything extra for his engine or vessel. But it might have been $20.

Ques. What do you know about Thomas Tobin unloading the cargo of oats?

(Objected to.)

Ans. He agreed to unload the oats for $200. After he had worked a day extra, he told Taberner and me that he could not do it for that, that he would loose money, and Taberner told him to go on, and he would give him $50 more. He unloaded the vessel, and brought
85 in a bill of about $500. We bothered over it awhile, and finally gave him $350. It was a wet job.

Ques. What do you know about this bill for pumping?

(Objected to.)

Ans. I know this bill is correct; I paid it myself.

Ques. What do you know about the bills mentioned in Schedule F, and about their being taken up and paid?

(Objected to.)

Ans. I know that those bills were made in the getting up and unloading the vessel, and that they were paid.

Ques. Will you now look upon Schedule C and tell us what you know about the bills there charged in about the repairs of the vessel, and whether the repairs for the bills therein mentioned were all and, if not all, what part were occasioned by reason of the collision.

(Objected to.)

Ans. Those repairs were all made necessary by reason of the collision; the repairs were made and the bills were paid. The anchor in the bill was to replace the one broken by the propeller, and is not quite as large as the one broken. It is about the same quality. It was wrought-iron that was broken.

Ques. How long were you detained in port making the repairs necessary to be made by reason of that collision?

Ans. The collision occurred on the morning of the 4th of May, and we left on the 8th day of June, at 12 o'clock. We were necessarily detained that long in the repairs. We had the vessel loaded two or three days before the repairs were completed. There was freight during that season to be had during the period of our detention.

Ques. What was her freight list at the time of the collision?

Ans. Her freight list amounted to fifteen hundred and twenty-four dollars, or in that neighborhood.

Ques. What was the use of the vessel worth per diem during the time of her detention?

Ans. We could have earned, including the freight we had on at the time, three thousand dollars. I mean three thousand dollars gross. We could have made another trip.

Ques. What would her net earnings have been during the time?

Ans. Her net earnings ought to have been eighteen hundred dollars.

86 Ques. What was she worth net per day during that period?

Ans. She ought to have been worth fifty dollars a day, or a little over. She would have earned eighty or eighty-five dollars a day gross at that time according to the price of freights.

Ques. What would the expense per day be about?

Ans. Thirty dollars a day ought to have paid the expense.

Cross-examination:

The Alleghany was outside of the piers some little distance when I first saw her. She might have been fifty rods from the pier. I can't tell, as I could not see the water. We were just below the Detroit & Milwaukee railroad dock. I was standing at the cabin, looking out generally. The second mate was steering. I took the helm short after the first signal was given. We were going about three knots. The tug was going under check. What little wind there was was blowing up the river. We could not be going very fast. We passed about where the center lines of the river and Straight Cut intersect in Exhibit D, perhaps a little to the southward. I

should think we ran about where the lines intersect. I know we were to the south of the centre of the river all the time. I can't tell how far to the south of the centre of the river where the lines intersect we were.

Ques. Who gave you orders as to steering when you ran out while you were at the wheel?

Ans. No one. When the master is at the wheel he uses his own judgment. In daylight, if the master is at the wheel, it is not necessary to receive any orders if he knows what he is doing; perhaps in the dark it might be different.

Ques. Who gave you directions as to where to steer?

Ans. No one gave me directions where to steer, and I did not think it necessary.

Ques. Had you opened the Straight Cut so that you could see out when the Alleghany entered the piers?

Ans. I think she was inside the piers when we opened the Straight Cut. She might have been her length inside the piers, or half her length. My impression is that she was just between the piers. She might have been her length inside the light-house; she might have been more. I would not undertake to say that she was not
87 two lengths of herself inside of the light-house. I should think she was all of her length in the piers.

Ques. How far were you to the south of the centre of the river when you first saw the Alleghany?

Ans. About one-third of the width of the river, to the southward of the centre of the river, when I first saw the Alleghany.

Ques. How much nearer the centre of the river were you at the time of the collision?

Ans. We might not have been any; if it were it was not much. We were to the south of the centre of the river all the time. The vessel is a 140 feet long, three masts, one sail up, and the other part way up.

Adjourned until Sept. 21st, 1864, at 8½ a. m.

SEPT. 21, 1864.

The parties met pursuant to adjournment.

I can't say where the Alleghany first checked her engine. She was stopped and reversed within twenty-five or thirty feet of us. I could tell by the motion of the water that she was reversed. I was at the wheel. I suppose the captain of the Alleghany was at the pilot house. I saw one person, if not two, at the wheel. The propeller was south of the centre of the piers when I first saw her between the piers. She kept southing until the collision. The Winslow came out in the spring of 1853. She was built at Black river, Ohio, and I lived there at the time she was being built. She went ashore three years ago this summer, and all the upper part of her was rebuilt. Seven thousand dollars was spent on her. There were several vessels laying on the south side of the river as we went out that morning. There were vessels laying between Kellogg & Strong's and Person's warehouses, and between the Person's warehouse and

the steam mill. There were one or two vessels laying below the steam mill at the sand dock, one of which was the Walter McQueen. Those vessels were not lying more than one deep. The Winslow was not in the piers, but she might have been ten feet or twenty feet above the piers. My impression is that her bows were very nearly abreast of the pier, and could not have been more than a few feet from the pier at the time of the collision. We might have been forty or fifty feet from the vessels lying at the south pier below the steam mill. We did not bear more toward the centre of the river than we had been running till we got below the angle of the dock, below the figures "66," where we commenced to make the turn in the bend of the river. The propeller Maine was the other steam vessel we saw. I think the Winslow grounded, and was hard and fast to the bottom fifteen minutes after the collision. The bulk-head was broken in by the collision. I can't say whether the tug came to us before the Alleghany went past or not. My impression is that the tug came to us first. The Alleghany backed right away from us. She did not get tangled. The oats prevented the vessel from filling as fast as the water went in at the hole made by the Alleghany. The width of the hole at the water line, as loaded, was about five feet. She was cut down to light water-mark. She must have been cut down about six feet. The vessel was drawing about 9 feet 6 inches. Two or three planks of the bulk-head was broken in.

88

Ques. How long was the Winslow sinking?

Ans. She was long enough in sinking to go from the point of the collision to where she sunk, which might be ten or fifteen rods, I think. The Winslow ran some ten or twelve rods below the end of the north pier before she sank. I cannot tell how far or what particular spot, as I had no mark to go by. Where she stopped was outside of the beach line of the lake, I think. I don't remember of but one gage there, which is pretty close to the north pier; it is of brown color, I think. I should not think it was over seven or eight rods. I did not think we were more than ten or twelve rods below the west end of the north pier. The stem was up above the iron railing, I think; how far I can't say. There was opening in the railing two feet below the stem of the vessel, by which we put the plank to the dock. The bow of the vessel was below that; three quarters of the length of the vessel was below that. I have got detailed bills for nearly all the charges on Schedules E and F. Captain Bidwell is marine inspector for the Ætna Insurance Company. He was there to look after the vessel by direction of the company, as it had an insurance on the hull of the vessel. I can't answer positively by whose order the survey was made by B. B. Jones. Mr. Pitman paid the bill of Thomas Toban. I paid the bills for pumping. We had a full crew at the time. I don't remember exactly how many men we had. The bill for steam pump was the bill of the engineer for attending and running steam pump. The bill of Ellsworth & Davidson was for working outside and shutting up the hole so that the

vessel could be unloaded. I have got the bills of Norris & Co. I think there are bills for everything mentioned in the schedules.

Direct examination resumed:

89 The capacity of the Winslow was 15,000 bushels of wheat. We had on 19,000 bushels of oats. The crew, all told, numbered ten men, including myself. We had that number at the time of the collision.

Ques. You have stated that the point of collision was about the west end of the south pier, and that you brought up with your stern near the north pier, some ten or twelve rods out from the west end of the north pier; will you state what carried you there?

Ans. At the time of the collision we had our foresail up, and our mainsail part way up. The wind was blowing from the southward at the time. After the Alleghany backed away from us, the vessel's canvass filled away, and she gathered headway and ran down the piers. As soon as we could get our boat lowered down, we ran a line to the north pier. We ran a line to the north pier and stopped her as soon as we could. We got her stopped at the point where she sunk. It might have been five or ten minutes before we got the line fast. We had got out the first line which was good for nothing, being an old rope, and it broke, and the vessel kept on, and we had to get out another rope before she was stopped. The tug also come and shoved us on down the pier, which accounts for the distance we went from the point of the collision. The boom was fast midships, and the sheets had not been started so that as soon as they filled they moved the vessel. The upper yards were braced up sharp; the sails were furled on the yards. The foreyards was cock-bill.

W. W. WELLS.

90 *Schedule F.*

Paid Michael Conner, diver, for services and steam pump	$220 00
Paid Thomas Tobin, unloading cargo of oats	350 00
Paid labor, pumping, while unloading	87 64
Paid B. B Jones, for services surveying Winslow	10 00
Paid running steam pump	20 00
Paid Judd & Hiles, half dozen baskets	4 00
Paid Ellsworth & Davidson, ship carpenter	55 10
Paid Plankinton, expenses unloading 200 barrels of pork from wreck	33 50
Paid steam pump six days, setting up pump, and cartage	138 50
Paid schooner Franklin	46 64
Paid discharging schooner Franklin, wet oats	35 00
Paid advances for labor	72 70
Paid Capts. Knight & Talbrus	20 00
Paid cords, &c., &c.	3 15
Paid towage	63 00
Paid Capt. Bidewell, services	135 84
Total	$1,159 23

91 *Schedule E.*

G. D. Norris & Co.'s bill, ship-chandlers	$375 14
Allen, McClelland & Co., ship-carpenters	2,286 83
James Sheriff, blacksmith	25 00
Wm. A. Tucker, painter	21 59
L. T. Chase & Co., oil and can	1 38
Minnie & Blend, blacksmiths	46 79
Mrs. Stultey, washerwoman	7 00
Guy F. Hinchman & Co., ship-chandlers, anchor, 1048 @ 1250 lbs., and cartage	131 50
J. J. Tallmadge, freight on do. and cartage	4 50
G. D. Norris, ship-chandler	20 25
G. D. Norris, ship-chandler	6 00
L. T. Chase & Co., ship-chandlers	9 75
Mens' time and board, from May 11 to June 8, 1864	495 67
From May 4 to May 10	204 83
Wm. A. Tucker, painting, lead, &c	17 75
Total	$3,662 98

92 Deposition of Alfred W. Rossman taken before me, George Cogswell, notary public, pursuant to the annexed stipulation, on this first day of December, 1864, upon the taking of which deposition J. H. Van Dyke appeared for the libellants, and E. Mariner for the respondents.

Question. What is your name, age, and occupation, and where do you reside?

Answer. My name is Alfred W. Rossman; my age is forty-seven; my occupation, a sailor; my residence, Chicago, Illinois.

Ques. How long have you been a sailor, and in what capacity?

Ans. I have been a sailor for thirty-one years, and have been in all capacities; am now master of the propeller Maine. I witnessed the collision between the propeller Alleghany and the schooner Winslow that took place in the forepart of May last, in the bend of the Milwaukee river and the Straight Cut. I was on the propeller Maine, on the pilot house, between the piers of the Straight Cut, inside the light-house. I saw the propeller Alleghany enter the piers that morning; she was, I should think, a hundred rods ahead of my propeller when she passed the light-house. I don't know and can't tell exactly what speed she was going at, but should think about six miles an hour.

Ques. Where did the Alleghany come up the Straight Cut as regards the centre, north or south?

Ans. She came up as near the centre as she could, but when she first entered she sheered toward the north pier so badly that I thought she would strike it; then she sheared to the south pier, nearly to it, probably thirty or forty feet off it; she then sheared back into the middle of the river and straightened up the river; she had got three quarters of the way to the bend before she straightened up.

Ques. Is it usual for propellers. in entering in the Straight Cut, to sheer about in the manner you have stated the propeller Alleghany did; and if not, what was the occasion of her so shearing from one side to the other?

Ans. No; I should think not, though we shear sometime when we happen to be coming too fast. It was on account of shoal water and too much headway.

Ques. Can a propeller, in entering the piers, sheering as the Alleghany did that morning, be safely handled with reference to other craft in the piers?

93 Ans. She might if there were no other vessels in the river.

Ques. How would it be in case there were other vessels in the river?

Ans. In case of meeting vessels, I should think there was some danger of a collision.

Ques. Will you look upon map marked Exhibit D, and mark with small "*e*" the point where the collision took place?

Ans. I have marked with small "*e*" the point; the point is between the west end of the piers, about thirty feet south of the centre of the Straight Cut.

Ques. What was the course and position of the Winslow at the time of the collision, and how was she headed?

Ans. I should think she was headed about south-southeast.

Ques. How far was her jib-boom from the south pier?

Ans. I should think about forty feet as near as I could judge. I was looking to see if I could steer through there. I stopped and lay still in the river till the wind blowed her around.

Ques. What was the Winslow doing at that point?

Ans. She was in the act of straightening up to get out, I suppose, as she had a tug hold of her towing her out.

Ques. Could she have gone any closer to the south pier with safety on the course she was running before straightening up; and if so, how much closer?

Ans. I should think she could have gone thirty feet closer, with a tug hold of her to jerk her around.

Ques. Would there not have been danger of her going closer, relying upon the tug to jerk her around?

Ans. I think not.

Ques. If she had gone closer on that course before straightening up, and the tug had not jerked her around, what would have become of her?

Ans. She would have probably went against the pier.

Ques. What course would a tug have to take, in order to jerk her around if she had gone closer?

Ans. She would have to give her more steam, and headed off from her pier a little.

Ques. How could the tug head off from the pier towards the centre, with the Alleghany coming up to the point you have marked on the map as the point of collision?

94 Ans. If the vessel had been ahead farther, the tug could

have kept along the pier and run under the stern of the Alleghany. When I saw the vessel she was not going ahead much, but kinder drifting sidewise, with the wind from the southwest, her foresail and mainsail partly up; I don't know whether her sails were shaking or filled.

Ques. What kind of wheel has the propeller Alleghany?

Ans. I think the Philadelphia wheel, new pattern.

Ques. What effect has the reversing of that wheel upon the progress of the vessel as compared with the old wheel that used to be used?

Ans. It won't stop her headway near so quick as the old wheel would.

Ques. How far will a propeller, with the speed at which the Alleghany was going between the piers head-reach with the new pattern wheel, and how far with the old patern wheel after the reversal of the wheel?

Ans. The difference is about one-half; they will head-reach about as far again with the new as they will with the old patern; the Alleghany, drawing eleven feet two inches, would probably head-reach about half her length after reversing her wheel, at the speed she was running then.

Ques. What motion had the Alleghany when she struck the Winslow?

Ans. The vessel was probably going ahead some little; I mean the propeller; her engine was backing pretty lively, and had been some little time before the collision.

Ques. What was there to prevent the Alleghany passing north of the point where the collision took place?

Ans. There was n thing in the way of her going there except her steering; my idea was, that the Alleghany intended to go south of the Winslow, until the tug signalled her to go the other side; then she was so close she could not get under the vessel's stern, and then she backed her engine.

Ques. Where, or about where, was the Alleghany when the tug first signalled her as you heard?

Ans. I should think three hundred feet from the Winslow.

Ques. Did the Alleghany reply to that signal?

Ans. No, sir.

Ques. Don't you know that the tug signalled the Alleghany shortly after the Alleghany entered the Straight Cut, and that this signal you speak of was the second signal the tug had given?

95 Ans. I only heard one signal. and then the Alleghany was pretty well up.

Ques. Did the Alleghany reply to any signal of the tug that morning?

Ans. I did not hear her.

Ques. You speak of the danger to other craft in the river of a propeller coming into shoal water in the Straight Cut, from sheering around about; have you had any experience under such circumstances; if so, how did your vessel act?

Ans. Yes, sir; she steered very wild all the way up the Straight Cut.

Ques. What do you mean by steering wild, and what was the reason for her steering wild?

Ans. That she sheers around and steers crooked, because I was coming too fast.

Ques. How wildly did the Alleghany steer that morning in coming up the Straight Cut.

Ans. She sheered across the river twice; then they got her steadied down by the time they got her in the middle of the river.

Cross-examined:

Vessels of the class of the Alleghany, at ordinary running in the lake, would make about ten miles; she is about a ten-knot boat; smaller vessels make better time sometimes; in running into port I always check outside, four, five, or six hundred feet outside, as the weather may be; that is, in speaking of coming into the Milwaudee harbor; in coming into Chicago harbor, have to check sooner; we check down slow, so as to merely keep a steerage-way; we shut off nearly all steam, fully three quarters, in coming in still water; we came fast enough to run in if we should shut off all the steam, but the propeller would not sieer well by shutting off all steam; we have to keep the wheel going to steer well, that is, while passing the light-house; there would be headway to pass the light-house, but if you would want to run up the river, you would have to put the engine going; a propeller of the size of the Alleghany, in the open lake, after you shut off steam, would run for a half mile if loaded; if light, she would not run so far; in the river she would not run hardly a quarter of a mile, I don't think; she would not steer in the river till her headway stopped; after a vessel is checked, you immediately perceive the difference in her speed;

96 that morning, in coming into the river, I checked my propeller further off than usual; I must have been a quarter of a mile from the light-house; I saw the Alleghany coming in ahead of me; when I got to the light-house I didn't think I was passing along over three or four miles an hour; I stopped the engine, I think, just as we passed the light-house; just as we got inside of the light, the Alleghany came up the river, but stopped before she got to the bridge; I then passed her and came through the bridge; that morning I think I was coming from the east; I was coming up the lakes and was then running from the north; at the time the Alleghany entered the piers I was not very far north of the piers; I was betwixt a quarter and a half of a mile northeast of the piers; in running up the river, I run faster than most vessels, as my boat steers better and is smaller; in coming into the Straight Cut, and up the river, we check when five or six hundred feet out in the lake; we then run under that check till we get to the bend of the river; I am now telling you how we do; in making the bend of the river we go within twenty-five or thirty feet of the south pier, to assist us in making the turn; I don't know whether or not there is a shoal along the north pier; I hear there is; when we

get in the river, if there are no vessels in the way, I generally go up the river full speed to abreast of the Milwaukee and Grand Haven dock; we then usually stop at Walker's point bridge; that morning the propeller Alleghany reversed her engine, I should think, a minute before the collision; my boat was drawing that morning about nine feet and a half; the water, I think, was in about the usual state; the wind was blowing off land, which would tend to make it a little lower; I don't know whether or not the Alleghany touched bottom or not that morning; they will rile up the water if not within two feet of the bottom; it was after the collision I looked to see if I could pass the Winslow between her and the south pier; the winslow sunk near the north pier, at a point I have marked on map D with a small "*f*;" I think that was the place at the cross mark in small "*f*;" she had not sunk when I got abreast of her; she had drifted far enough north to let me pass her to the south; she was struck in the port bow, and the effect was to bring her more across the channel; the tug
97 did not, I think, hang on to the vessel after the collision; she ran out into the lake; she passed me fast; I hailed him; I told him to go back and tow the vessel out of the channel; he did not do so; I went up the river before the tug went up; I was observing the tug after I heard it signal the Alleghany.

Ques. How long after the tug signalled the Alleghany did the tug commence running faster.

Ans. It was after the collision she commenced running faster. I don't know how much steam she then carried. She was going then out to the lake full speed, I should think.

Ques. If the tug having the vessel in tow was on the south side of the centre line of the river when opposite the steam mill, was there anything to prevent her keeping to the south line of the centre of the river and Straight Cut, as marked on the map D, all the way out to the lake?

Ans. There was not.

Ques. What is the ordinary course you take in going out from the steam mill?

Ans. We come along close to the dock in front of block 66, then pass across within about forty feet of the west end of the north pier, then right out the centre of the Straight Cut; that is, when nothing is in the way. We ordinarily draw ten feet in going out. We are allowed ten feet in the canal. Our fuel here makes us about ten feet three inches. I am now speaking of the Maine, my boat. In going out we can run, I think, within ten feet of the south pier if we want.

Ques. Do you think the master of the tug managed the Winslow as well as he might have done that morning in coming out?

(Objected to.)

Ans. No, sir.

Ques. In what respect might he have done differently?

(Objected to.)

Ans. I think he might have had his vessel more straightened up if he intended to keep the south side of the river.

Ques. Was there any difficulty in his having the vessel straightened up at point marked "H."

Ans. I should think not.

98 Ques. Do you know how near the north pier a vessel drawing eleven feet three inches can run with safety from point small "*e*" on the north pier to the west end of the north pier?

Ans. No, sir. A propeller drawing that much water, eleven feet three inches in the Straight Cut, would require twelve feet and a half to move safely. With less water than that, you could not depend upon her answering her helm at all.

Ques. After the collision, when did you next see the master of the tug?

Ans. About an hour after he came to my boat at Hale's dock.

Ques. What did he say about it?

Ans. He said he had quit the tug. He said he had given the propeller a signal to go on the north side.

(Objected to.)

Ques. Do you know whether the master of the tug, at and before the time of the collision, was frightened or not?

(Objected to.)

Ans. I don't know. I concluded he was evidently excited. I so concluded from the way he acted at the time of the collision, and from what he told me after the collision.

Ques. If opposite point "J," in block 66, the master of the tug discovered that the propeller did not mind her helm at all, was there any difficulty in his taking the Winslow clear of the propeller on either side?

(Objected to.)

Ans. I should think he could have gone clear of her on either side. The propeller's wheel on the way up the Straight Cut at the time of the signal was put hard aport, which would have sent her to the north side if she had minded her helm. Before the signal it was hard astarboard, and hard aport a half a dozen times, I should judge by the way she was going; that is the way she was steering up the Straight Cut. I saw the helm put hard aport when the tug's signal was given. The propeller did not mind her helm. She kept right straight along. It did not appear to move her. She did not have headway enough then to steer quick. She might have headway enough to steer some, to move her some, but very little. Can't tell how much. At the time the tug signalled the propeller, the tug, I think, was down nearly to the bend at point marked "K." The propeller was then at point "L," at cross in "L."

99 Ques. If the tug, at the time of signal, ascertained that the Alleghany did not steer, but was running directly up the river—Straght Cut, I mean—might she not have taken the Winslow on either side of the propeller then?

(Objected to.)

Ans. I think she was a little too close then at the time of the signal to have attempted to have gone to the north side. If she had

have kept along the pier and run under the stern of the Alleghany. When I saw the vessel she was not going ahead much, but kinder drifting sidewise, with the wind from the southwest, her foresail and mainsail partly up; I don't know whether her sails were shaking or filled.

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Ans. I should think three hundred feet from the Winslow.

Ques. Did the Alleghany reply to that signal?

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Ques. Did the Alleghany reply to any signal of the tug that morning?

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Ans. There was not.

Ques. What is the ordinary course you take in going out from the steam mill?

Ans. We come along close to the dock in front of block 66, then pass across within about forty feet of the west end of the north pier, then right out the centre of the Straight Cut; that is, when nothing is in the way. We ordinarily draw ten feet in going out. We are allowed ten feet in the canal. Our fuel here makes us about ten feet three inches. I am now speaking of the Maine, my boat. In going out we can run, I think, within ten feet of the south pier if we want.

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(Objected to.)

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Ques. After the collision, when did you next see the master of the tug?

Ans. About an hour after he came to my boat at Hale's dock.

Ques. What did he say about it?

Ans. He said he had quit the tug. He said he had given the propeller a signal to go on the north side.

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Ques. Do you know whether the master of the tug, at and before the time of the collision, was frightened or not?

(Objected to.)

Ans. I don't know. I concluded he was evidently excited. I so concluded from the way he acted at the time of the collision, and from what he told me after the collision.

Ques. If opposite point "J," in block 66, the master of the tug discovered that the propeller did not mind her helm at all, was there any difficulty in his taking the Winslow clear of the propeller on either side?

(Objected to.)

Ans. I should think he could have gone clear of her on either side. The propeller's wheel on the way up the Straight Cut at the time of the signal was put hard aport, which would have sent her to the north side if she had minded her helm. Before the signal it was hard astarboard, and hard aport a half a dozen times, I should judge by the way she was going; that is the way she was steering up the Straight Cut. I saw the helm put hard aport when the tug's signal was given. The propeller did not mind her helm. She kept right straight along. It did not appear to move her. She did not have headway enough then to steer quick. She might have headway enough to steer some, to move her some, but very little. Can't tell how much. At the time the tug signalled the propeller, the tug, I think, was down nearly to the bend at point marked "K." The propeller was then at point "L," at cross in "L."

99 Ques. If the tug, at the time of signal, ascertained that the Alleghany did not steer, but was running directly up the river—Straght Cut, I mean—might she not have taken the Winslow on either side of the propeller then?

(Objected to.)

Ans. I think she was a little too close then at the time of the signal to have attempted to have gone to the north side. If she had

get in the river, if there are no vessels in the way, I generally go up the river full speed to abreast of the Milwaukee and Grand Haven dock; we then usually stop at Walker's point bridge; that morning the propeller Alleghany reversed her engine, I should think, a minute before the collision; my boat was drawing that morning about nine feet and a half; the water, I think, was in about the usual state; the wind was blowing off land, which would tend to make it a little lower; I don't know whether or not the Alleghany touched bottom or not that morning; they will rile up the water if not within two feet of the bottom; it was after the collision I looked to see if I could pass the Winslow between her and the south pier; the winslow sunk near the north pier, at a point I have marked on map D with a small "*f*;" I think that was the place at the cross mark in small "*f*;" she had not sunk when I got abreast of her; she had drifted far enough north to let me pass her to the south; she was struck in the port bow, and the effect was to bring her more across the channel; the tug
97 did not, I think, hang on to the vessel after the collision; she ran out into the lake; she passed me fast; I hailed him; I told him to go back and tow the vessel out of the channel; he did not do so; I went up the river before the tug went up; I was observing the tug after I heard it signal the Alleghany.

Ques. How long after the tug signalled the Alleghany did the tug commence running faster.

Ans. It was after the collision she commenced running faster. I don't know how much steam she then carried. She was going then out to the lake full speed, I should think.

Ques. If the tug having the vessel in tow was on the south side of the centre line of the river when opposite the steam mill, was there anything to prevent her keeping to the south line of the centre of the river and Straight Cut, as marked on the map D, all the way out to the lake?

Ans. There was not.

Ques. What is the ordinary course you take in going out from the steam mill?

Ans. We come along close to the dock in front of block 66, then pass across within about forty feet of the west end of the north pier, then right out the centre of the Straight Cut; that is, when nothing is in the way. We ordinarily draw ten feet in going out. We are allowed ten feet in the canal. Our fuel here makes us about ten feet three inches. I am now speaking of the Maine, my boat. In going out we can run, I think, within ten feet of the south pier if we want.

Ques. Do you think the master of the tug managed the Winslow as well as he might have done that morning in coming out?

(Objected to.)

Ans. No, sir.

Ques. In what respect might he have done differently?

(Objected to.)

Ans. I think he might have had his vessel more straightened up if he intended to keep the south side of the river.

Ques. Was there any difficulty in his having the vessel straightened up at point marked "H."

Ans. I should think not.

98 Ques. Do you know how near the north pier a vessel drawing eleven feet three inches can run with safety from point small "*e*" on the north pier to the west end of the north pier?

Ans. No, sir. A propeller drawing that much water, eleven feet three inches in the Straight Cut, would require twelve feet and a half to move safely. With less water than that, you could not depend upon her answering her helm at all.

Ques. After the collision, when did you next see the master of the tug?

Ans. About an hour after he came to my boat at Hale's dock.

Ques. What did he say about it?

Ans. He said he had quit the tug. He said he had given the propeller a signal to go on the north side.

(Objected to.)

Ques. Do you know whether the master of the tug, at and before the time of the collision, was frightened or not?

(Objected to.)

Ans. I don't know. I concluded he was evidently excited. I so concluded from the way he acted at the time of the collision, and from what he told me after the collision.

Ques. If opposite point "J," in block 66, the master of the tug discovered that the propeller did not mind her helm at all, was there any difficulty in his taking the Winslow clear of the propeller on either side?

(Objected to.)

Ans. I should think he could have gone clear of her on either side. The propeller's wheel on the way up the Straight Cut at the time of the signal was put hard aport, which would have sent her to the north side if she had minded her helm. Before the signal it was hard astarboard, and hard aport a half a dozen times, I should judge by the way she was going; that is the way she was steering up the Straight Cut. I saw the helm put hard aport when the tug's signal was given. The propeller did not mind her helm. She kept right straight along. It did not appear to move her. She did not have headway enough then to steer quick. She might have headway enough to steer some, to move her some, but very little. Can't tell how much. At the time the tug signalled the propeller, the tug, I think, was down nearly to the bend at point marked "K." The propeller was then at point "L," at cross in "L."

Ques. If the tug, at the time of signal, ascertained that the Alleghany did not steer, but was running directly up the river—

99 Straght Cut, I mean—might she not have taken the Winslow on either side of the propeller then?

(Objected to.)

Ans. I think she was a little too close then at the time of the signal to have attempted to have gone to the north side. If she had

attempted it, she would have been to blame if there had been a collission. After having signaled, she could have gone to the south side, if she had straightened up on the vessel. She seemed to me to rather slack up, and rather let the vessel drift. The wind was blowing pretty fresh that morning from the southwest. The lake was smooth. I ordinarily run my boat in the lake, when bound up, about twelve miles an hour; when bound down, about eleven; that is our ordinary all-day gate.

Ques. How fast were you running at the time you said you run into the Straight Cut without checking?

Ans. We came from Chicago in six hours and twenty minutes; don't know how fast we were coming up the Straight Cut; were not going so fast when we got into shoal water; we did not check until we got past the light-house; we were racing that time; there was then no shoal water til we got to the light-house, so that we must have entered the piers at a speed of fifteen miles an hour; when we get to shoal water, a boat squats right down and checks her speed; I don't think we could come up the river eight miles an hour, if we should try the best, with a full head of steam.

Ques. How much would your speed run down in the open lake after checking, in running four or five hundred feet?

Ans. That would be owing altogether how low you would check down. At two-thirds check she would lose not quite two-thirds of her headway in that distance. In shoal water, in running that distance with that check, she would lose a little over two-thirds of her headway.

Ques. In running between the piers with full speed, if you should check to one-fourth, how far would the vessel run before she would have only the headway due to that fourth?

Ans. I don't think she would run over six hundred feet; I think she would run five or six hundred feet.

Ques. If a vessel drawing eleven feet of water was to approach the piers at a speed of nine miles an hour, and check one
100 hundred and fifty feet out from the piers down entirely, how far would she run between the piers?

(Objected to.)

Ans. If she should stop her engine entirely outside, in calm weather, she would probably come three or four hundred feet inside, if they could steer her. They could not stop the Alleghany so far outside, and steer her inside so far as three hundred feet. She is what they call a long-legged boat; she draws a good deal of water for her size.

Ques. Was there wind enough that morning to impede her progress up the Straight Cut very much?

Ans. Not a great deal. It was blowing pretty fresh out, and would stop her some; as she lost her headway, it would make her steer worse.

Ques. If she was going eight miles outside, and ran in without checking, how fast would she run inside?

(Objected to.)

Ans. It would depend how far up; she would pass the light-house at about seven miles an hour; about the middle of the piers, five to five and [and] a half miles; I think the Alleghany is about a ten-knot boat.

Ques. If the Alleghany was running ten miles outside, and checked a couple of lengths outside, at what speed would she pass the piers, provided she checked down two-thirds?

(Objected to.)

Ans. She would pass the piers at about six miles an hour.

Ques. How long have you been master of a propeller?

Ans. I have sailed a propellor for fourteen years. I was in the Buckeye six years, and the Maine two years, and in the Lady of the Lake six years as master.

Ques. Suppose you should ascertain that, as a matter of fact, the Winslow sunk with her stern at the end of the iron railing instead of at the point marked "*f*," would you be of the impression or would you alter your idea as to the point of the collision?

Ans. If she sunk there, I should think the collision was a little lower down the river.

Ques. Would there have been any difficulty or danger in the tug and vessel stopping between the point K and the point of collision?

101 Ans. Not if the tug had stopped along side of the vessel; that is a common maneuvre; they do it in Chicago.

Re-examined:

Ques. If you should ascertain, as a matter of fact, that the Winslow was pushed over by the tug and drifted by the wind from the place of collision marked by you at "F," would that fact explain to you how she got there, and what would you then say as to changing the point of collision as marked at "F"?

Ans. Not if she was pushed there before she sunk.

Ques. What was there to prevent the propeller stopping at any point between the east end of the piers and the point of collision?

Ans. Nothing to hinder her stopping.

Ques. How does the Allegahany steer as compared with ordinary propellers in shoal water?

Ans. I don't know, but I should think a little wild, on account of her draft of water. I have seen tugs coming out of Chicago to tow her in, which I suppose was on account of her steering badly on account of her draft of water; there was then 12 feet of water at Chicago.

Ques. How is the wild steering of a propeller like the Alleghany, drawing 11 feet 3 inches in shoal water, affected by her speed; is it increased or lessened; and does she steer more wildly in shoal water when going fast than when going slow?

Ans. Yes, sir.

Ques. Would she steer more wildly at a speed of six miles an hour in the Straight Cut than at a speed of two miles, and what would be her proper speed in coming into and up the Straight Cut?

(Objected to.)

Ans. She would steer more wildly at six miles than at two miles; though two miles is rather too slow to steer well, I think; at about four miles an hour I should judge she would steer best.

Ques. You have spoken of the course you ordinarily take in coming up the Straight Cut, and that you keep close to the west end of the south pier to help you make your turn in the river. Do you do so when vessels are coming out on the south side?

Ans. We do not when vessels are coming out on the south side.

Ques. Do you do so when tugs signal you to take the north side?

102 Ans. A tug never signalled me, but I probably should not; our regulations are that a vessel going down the current has the choice; that is regulation in the river.

Ques. Were you apprehensive of a collision that morning; if yea, when did you first apprehend it and what made you apprehend it?

(Objected to.)

Ans. I apprehended it a minute or two just before the collision took place. I thought the vessel was in a rather awkward shape for that part of the river. I thought she was too much athwart the creek and the wild steering of the propeller.

Re-cross-examined:

Ques. Did you apprehend the collision before or after you heard the signal of the tug, do you recollect?

Ans. After the signal it was, I thought there would be a collision; right off, immediately, two or three minutes after the signal it was that I thought there would be collision. I apprehended it before I saw the propeller backing. I thought there would be a collission; I knew nothing about the steering of the Alleghany except by seeing her.

Ques. How long was it after you heard the tug's signal before the Alleghany commenced backing, and did she not commence backing immediately after you heard the signal?

Ans. I thought not right off; I thought it was a few minutes before she commenced backing. The collision was very soon after she commenced backing.

Ques. How many vessels has the Alleghany collided with, to your knowledge, within the last two or three years, besides the Winslow? State as near as you can.

Ans. I knew of one on Lake Huron; I heard she had a collision since this one.

A. W. ROSSMAN.

Subscribed and sworn to before me this 2d day of December, 1864.

GEO. COGSWELL,

Notary Public in and for the State of Wisconsin, Mil. Co.

103 DISTRICT OF WISCONSIN, *ss:*

The foregoing deposition of Alfred W. Rossman was taken before me pursuant to annexed stipulation, commencing December 1, 1864,

and closing December 2d, 1864, the said Rossman having been by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, as to the matters to which he might testify in said action: that the same was reduced to writing by me and partly by John H. Van Dyke, by consent of the respondent's counsel, E. Mariner; and was read over to the said Rossman, and was subscribed by him in my presence.

GEO. COGSWELL,
Notary Public for the State of Wisconsin, Milwaukee Co.

It is hereby stipulated and agreed by and between the parties for the libelant and respondent in the above entitled action that the deposition of Alfred W. Rossman and Simon Townsend be taken by and before George Cogswell, esq., a notary public of the State of Wisconsin, pending in the city of Milwaukee, in said State, on the part of the libelant; that said witness be first duly sworn by said notary to speak the truth, the whole truth, and nothing but the truth, in the matters to which he may testify in said action; that the deposition be reduced to writing by said notary or in his presence, and subscribed to by said witness, and by him, or one of the parties in said action, filed with the clerk of said court, together with this stipulation, and that when the same is so taken it may be used as evidence in said suit; and also in a certain other action against said propeller pending in said court, wherein Sarah S. Wolverton and James E. Pitman are libellants, with the same effect as if the same had been taken upon trial of said actions, or before a commissioner of said court pursuant to the rules and practice of said court, or under an order of court.

Dated Milwaukee, December 1st, 1864.

EMMONS & VAN DYKE,
For Libellant.
E. MARINER, *For Respondent.*

SIMEON TOWNSEND having been duly sworn pursuant to the foregoing stipulation, testified:

I am thirty-five years of age; am a sailor, have been nineteen years. The past eight years I have been first mate of different vessels or propellers. The past season I have been first mate of the
104 propeller Maine. I was on her on the morning of the collision of the propeller Alleghany and the schooner Winslow at the time of the collision. I was forward on the promenade deck; had been there for twenty minutes before. The Maine was then coming into the harbor at this port, just outside the piers. I saw the Alleghany come in that morning. She came in about six or seven rods, perhaps more, ahead of us; it's a good while since, and I might vary a few rods; she was coming in, I should say, between six and seven miles an hour at the time of entering the piers. I did not notice when she first checked. That was a little faster than propellers usually enter the piers. They usually enter at about four miles an hour.

Ques. What was the reason she was coming in so much faster than usual?

(Objected to by defendants.)

Ans. I could not give reasons for any other boats coming in faster than the usual speed that I know of. If I should give any reason they might not be right.

Ques. Was there anything which induced you to believe from her actions what was the reason of her coming in at such unusual speed?

(Objected to by defendants.)

Ans. Nothing, without she was trying to get in ahead of us. I saw the vessels collide. The collision was right off the point which is the west end of the north pier or a trifle below; I mean a few feet out toward the lake. Letter "*m*" is about the point where I think the collision took place. The schooner at that time was turning the bend to go out the Straight Cut; she was not hardly straightened up to go out the piers.

Ques. From the time you saw the Alleghany enter the Straight Cut until the time of the collision, tell me what you observed up to the time of the collision as to the movements of the colliding vessels?

Ans. The Alleghany entered and kept nearly the center of the cut. When she was near the bend I saw the Winslow coming out in tow; the propeller sheered in to the north pier. I suppose she was going between the vessel and the north pier. All at once I saw her stop her wheel and reverse it and commence backing. I noticed that her bow swung out into the channel to the southward at the time she commenced backing. I saw her at that time strike the ves-
105 sel in the port bow. The Alleghany was going ahead when she struck the vessel. I could not tell how fast, as I was right astern of her, but she must have been going pretty fast to have ran into a vessel so far through. The Alleghany was, I should think, about her length from the Winslow when she commenced backing. I think she would head-reach about twice her length, or nearly that, after the reversing of her wheel, with the motion she then had.

Ques. Do you know how far the stem of the Alleghany went into the bow of the Winslow?

Ans. I don't know how far.

Ques. With the stem of the Alleghany going into and through the bow of the Winslow to near or about amidships, breaking two of the deck beams, besides going through the outer planking, plank sheer, tearing up the deck, cutting a hole through the bow from six to eight feet wide, about what speed must she have been moving at?

(Objection, that he is not an expert, and the question assumes facts not proven.)

Ans. It would depend on the whether the Alleghany was loaded or light; it would depend, too, upon how the vessel was loaded.

Ques. (Same question repeated, assuming the schooner loaded with two hundred barrels of pork and about fourteen thousand bushels of oats, and the Alleghany loaded within five hundred to a thousand barrels of her capacity.)

(Same objection.)

Ans. She must have been moving at the rate of between two or three miles an hour, I should think.

Ques. Was there anything to prevent the Alleghany's stopping at any point between the entrance of the piers and the bend?

(Objected to.)

Ans. No, sir.

Ques. Was there anything to prevent her backing before she got within a length of the Winslow?

Ans. Nothing that I know of.

Ques. What should the propeller have done to have prevented that collision, upon seeing the vessel coming out of the river in tow of the tug in the act of straightening up to go out of the Straight Cut?

(Objected to.)

106 Ans. She should have held up until the vessel got straightened out with the cut.

Ques. Is there any difficulty in holding a propeller up under such circumstances?

Ans. Not if they commence in time to check them down. When you are going fast and get too close, they sometimes steer the wrong way.

Ques. What was the trouble in the management of the Alleghany in this instance, and what caused her to slew around?

(Objected, not proved that she did slew around.)

Ans. I should say the trouble was in her going too fast, and in her slewing off to the southward, and in going too close to the north pier; it might have been her wheel which slewed her, but I can't say.

Ques. Is not the point of entrance from the river to the Straight Cut, and from the Straight Cut to the river in making the bend, a critical point to make when there is another vessel there coming in or going out?

Ans. I should not consider it safe to meet a vessel in that bend in tow without you went very slow; I mean without both vessels went very slow.

Ques. What has a vessel in tow to do, in making that point, to get out?

(Objected to.)

Ans. They have to give the bend a good berth, that is keep well to the southward. What I mean is, there is a shoal near the north pier, (the west end,) and if they run too near they will shear away. The usual course of a vessel going down in tow is this, they keep nearer the west side of the river in going down; that gives them a longer turn when they get to the bend; they strike about the centre between the piers in going out. But in case of meeting another vessel they can keep a little over from the centre with safety. They have to straighten up at the bend when they are entering the piers to pass out.

Ques. How was the Winslow heading that morning at the time the propeller ran into her, with regard to the south pier?

Ans. A little toward the south pier.

Ques. How long would the Alleghany have had to have held up, to have let her, the Winslow, pass clear?

Ans. A couple minutes would have passed her clear.

107 Ques. Would not one minute or a half minute have let her pass clear?

Ans. Half a minute would have let the schooner pass clear where she was at the collision, but she, the Alleghany, ought to have held up a couple of minutes before reaching that point.

Ques. What do you mean by holding up?

Ans. Checking and slowing, by stopping the engine.

Cross-examination:

Ques. How far were you astern of the Alleghany at the time of the collision?

Ans. About five or six rods. I would not say for certain which way we came from, but we came from opposite directions. We checked down some distance outside of the piers that morning, farther than usual, because of the Alleghany's coming in ahead of you. The Maine is the faster vessel of the two. We were not full that time, that is, we had not a heavy load. I saw the Winslow first just above the bend, before she turned to come out. I did not take notice of her speed and should not like to give an estimate of it. I don't recollect what sail the Winslow had up; they were loosening her sails, and I think she had part of her fore-and-aft canvas set. We ran up near the centre of the channel. I did not notice whether the engine of the Alleghany was checked; when she entered the piers she was running under a check before she stopped, but I can't say how long. The Alleghany looked to be pretty well loaded.

Ques. If the Alleghany had been standing still, and the Winslow had been running toward her on the same course she was coming, with the speed which you suppose both vessels to have had, would not the bows of the Alleghany have gone as far into the Winslow as she did?

Ans. She would have probably made a glancing blow and slid off if the propeller had been standing still.

Ques. Which way would she have slid off?

Ans. The vessel would have slid off to the south side of the propeller.

Ques. Do you know where the Alleghany struck the Winslow?

Ans. On the bluff of the bow, right forward of the fore rigging. I can't say how far forward of her fore rigging, but I think between her fore rigging and her cat-head.

Ques. If the Alleghany had been stationary, and her bow had struck the Winslow on the cat-head, would she have slid off to the south side of the propeller, in your opinion?

108 I think she would. It would doubtless have done some damage, but I don't believe the Alleghany would have penetrated the hull of the Winslow.

Ques. Which way was the Winslow heading at the time of the collission?

Ans. I could not tell exactly, but I should think about southeast.

Ques. How fast was the Winslow running at the time of the collission?

Ans. I could not tell exactly how fast; it would be a mere guess. She might have been going three miles an hour and might have been going four. I hate to state postively; it is guess-work.

Ques. What would be the effect of the wind on such of the sails of the Winslow up at the time of the collission in causing her to drift sideways towards the propeller?

Ans. I don't recollect which way the wind was; as I recollect, it was pretty still, and I don't think what sail she had on would have had much effect.

Ques. If the wind had been blowing fresh from the southwest, what would have been the effect?

Ans. It would have drifted the vessel into the propeller a little.

Ques. Would that drifting been increased or diminished by the speed at which the vessel was towed?

Ans. I don't think it would have been effected at all. If she went faster she would drift less in a given distance, but would drift the same distance in the same length of time.

Ques. If the Winslow had been drifting with the wind, in addition to her motion from the tug, and she had struck the Alleghany at the same place, the Alleghany being stationary, would the Alleghany have penetrated the Winslow, or would the Winslow have glanced, in your opinion?

Ans. I think when she fetched up against her hull she would have glanced off; she would probably have carried her rail and bulwarks.

Ques. Would it have made any difference whether the Winslow was a new or an old vessel, about her glancing off from the Alleghany?

Ans. Yes, it would. If she had been an old vessel, her timbers had been in any wise rotten, she would give easier.

Ques. What would have made the Winslow glance from the Alleghany?

109 Ans. She struck a glancing blow; did not strike square on. If the vessel had been standing still and the propeller going ahead, it would not have been a glancing blow; but if the propeller had been standing still and the vessel going ahead, it would.

Ques. How do you make that out?

Ans. Because she is running across the propeller's bow.

Ques. Suppose she had struck the propeller four feet forward of her cat-head, would she have glanced?

Ans. If she had been a sound vessel, with the speed she was going then, I think she would have glanced off.

(Witness gives this answer after looking at a photograph of the Winslow.)

Ques. How fast was she going then?

(Objection; witness has twice answered that he did not know how fast she was going.)

Ans. I think she could not have been towing fast enough, so but

that she would have glanced off; I can't tell how fast she was going.

Ques. Would the speed at which she was going have any effect in making her glance?

Ans. The slower she went the more likely she would be to glance off.

Ques. Was the Winslow going straight ahead or swinging toward the propeller at the time of the collision?

Ans. The Winslow might have been steadied at the time of the collision for what I know. She might have been turning a little; I could not say.

Ques. Don't you recollect that when the tug passed the Alleghany's bows she swung around short to run out the Straight Cut?

Ans. The tug might have turned short, but the vessel, by putting her wheel hard aport, could have steadied her a few seconds. After the tug passed the Alleghany's bow she was on a turn, and a little more headed out than the vessel was.

Ques. Did not the tug, as soon as she passed the Alleghany's bow, put on more steam and swing the Winslow toward the Alleghany's bow?

Ans. I could not say that she did.

Ques. How long after she passed the Alleghany's bows was it before the tug put on more steam?

110 Ans. I can't say that the tug put on more steam.

Ques. Did not the tug run down past your vessel immediately after the collision?

Ans. I do not recollect; I believe the tug did not pass outside of us; don't know how much steam she was using when she run past our vessel; can't say how fast she was running.

Ques. Was it ten miles an hour?

Ans. Think she was not running ten miles an hour. I recollect we thought she acted singularly; did not know how to get her to the dock; made no attempt to get to the vessel until after she went down and came back; recollect the tug running down, and our captain hailing them to come back to move the vessel out of the channel, or something to that effect.

Ques. Did not hear the tug or the Alleghany signal that morning?

Ans. The Alleghany backed her engine sharply after her wheel was reversed.

Ques. Is there an understanding among the officers of vessels running to this port that there is a shoal on the south side of the north pier near the west end?

(Objected to.)

Ans. I have heard several captains and mates speak about a small spit off there. I judge there is, because vessels sheer when they get too close.

Ques. How closely can a vessel go at ordinary speed to that spit and not sheer?

Ans. About sixty feet from the north pier, in order not to sheer, drawing ten feet of water; eleven feet and upward would not make much difference.

Ques. How would it be with a vessel drawing eleven feet and upward; how near would she go without sheering?

(Objected to, because it don't fix any point along the length of the pier with reference to which the collision took place.)

Ans. She would want to keep near the centre of the harbor. I did not apprehend a collision until the propeller commenced backing. There is no difficulty, to my knowledge, in navigating a vessel in tow of a tug to the westward and southward of the centre of the channel of the river and Straight Cut all the way out. It is easier to get out to keep well to the southward or near the centre.

111 Re-examined direct:

Ques. Was there wind enough that morning to drift the Winslow with the sails she had on?

Ans. Not to make any difference.

Ques. If there is eleven or twelve feet of water within thirty or forty feet of the west end of the north pier, what is there to prevent a propeller from coming in, to pass within that distance at that point of the north pier, if she will go slow enough?

Ans. Not any difficulty if she go slow enough and did not draw too much water.

Ques. You have answered that if the shoal spoken of along the north pier puts out sixty feet, that a propeller coming up drawing eleven feet water and upwards, should take the centre of the Straight Cut; why should she take the centre of the Straight Cut if there is a breadth of seventy feet of sufficient depth between the centre of the Straight Cut and the shoal?

(Objected to.)

Ans. Because it gives them a longer turn in straightening up the river.

Ques. In your answer to the question about keeping to the centre of the Straight Cut for the reasons you have stated, do you mean to be understood that a vessel should keep the center when other vessels are in the way, or when the channel is free?

Ans. When the channel is clear and nothing in the way.

Cross-examined:

Ques. If there is only ten feet of water sixty feet out from the north pier and eighty feet below the west end of the north pier, how can a propeller drawing eleven feet of water keep within forty feet of the west end of the north pier?

(Objected to, because the question don't give the depth of water between the assumed point of eighty feet from the west end of the pier.)

Ans. They could not keep within that distance if there was only ten feet of water and they were drawing eleven feet.

Ques. How much water does a propeller drawing eleven feet
112 three inches require to steer, going three to four miles an hour?

Ans. They will sheer in eleven and a half feet of water if there is

no shoal close by. They will sheer from a shoal thirty or forty feet off.

Ques. If it is sixty feet to ten feet two inches water at a point eighty feet from the west end of the north pier, is it safer for a vessel coming out and meeting a propeller at that point that the propoller should run her width to the south of the center line of the river, supposing that the water is twelve feet deep from the center line of the river to within fifteen feet of the south pier, and that the vessel has signaled the propeller to pass to the right, or that she run within eighty feet of the north pier?

(Objected to, because the question is complicated, and uncertain, and indefinite, in not defining safety in regard to the matters inquired of.)

Ans. It would not be safe for a vessel going four miles an hour to pass a propeller to the southward of her so close to the south pier.

Ques. What would be the distance from the side of the propeller to the south pier?

Ans. About 70 or 80 feet; some propellers are wider than others.

Ques. Why wouldn't it be safer for vessels to pass through that 70 or 80 feet?

Ans. Because a vessel would be heading on the south pier in passing the propeller, and would have hardly time to straighten up before she run on to the pier.

Ques. Why would a vessel be heading towards the south pier at that place?

Ans. Because she would be turning the bend of the river before straightening up in the cut.

Ques. What point are you speaking of with regard to?

Ans. At the bend at the west end of the north pier.

Ques. The point at which the question supposes the passing is 80 feet east of the west end of the piers, and either 150 or 110 feet from the north pier?

Ans. There would be no difficulty in passing at that point provided they kept close to the propeller.

Ques. Which place would the propeller steer best, 80 or 130 feet from the north pier?

113 (Objected to as immaterial.)

Ans. 130 feet.

Ques. Would not that leave nearly 100 feet between the propeller and the south pier, that is, a propeller the size of the Alleghany?

Objected to; not cross-examination, and leading.)

Ans. Yes.

Ques. Now, taking into account the better steering of the vessel running 130 feet off from the north pier, and that there is 100 feet clear to the south of the propeller for a vessel to pass in, and that she has signaled that she will pass on the south side, is not the position of the propeller 130 feet from the north pier as safe for the vessel coming out as if the propeller was running within eighty feet of the

north pier, that is, supposing both vessels to have been within sight of each other for ten minutes?

(Objected to.)

Ans. That is owing to the speed at which they were running; a propeller in being that distance from the pier and running fast would answer her helm sooner and sheer out of the way. If she was running within 80 feet of the north pier, running fast, there is danger of her sheering off to the southward into the vessel.

Ques. What difficulty is there when a tug steers well and a vessel steers well, in a tug taking a vessel past a propeller lying forty feet south of the centre of the Straight Cut and forty feet out from the west end of the piers.

(Objected to.)

Ans. The difficulty is, there is not room to turn round and straighten up so close to the end of the pier.

Ques. What is the reason the vessel can't make the turn before she gets to the piers, with the aid of the tug?

(Objected to.)

Ans. She can run up and make that turn if she goes slow enough; there is not room if she is running at any speed, to make so short a turn.

Ques. How long have you been running to this port?

Ans. Ever since the Straight Cut was made.

Ques. Have you any idea how much room there is there to make the turn?

114 Ans. I have. You have got about twice the length of an ordinary vessel. I don't know the feet.

Ques. Haven't you five times the length of an ordinary propeller?

(Objected to.)

Ans. Have not.

Ques. When would you begin to turn to make that place?

Ans. At small "*n*" marked on map "D."

Ques. If you begin to turn at small "*n*," would you not have to work pretty lively to get your vessel's head as far north as the point we have supposed?

(Objected to.)

Ans. You would have to turn sharp around.

Ques. Would not it be easier to go close to the south pier, if you turn at "N," than at the point I have given?

(Objected to.)

Ans. You would not have quite so far to turn. The trouble would be to keep off the south pier and not run into it.

Direct resumed:

Ques. Assuming at a point thirty feet south of the west end of the north pier that there is water enough for the Alleghany to have moved in, what difficulty would there have been in her going slow to have passed the west end of the north pier, and would the fact of the shoal being sixty feet from the north pier, eighty feet from the west end of the pier, and rounding to the west end of the pier, have pre-

vented the propeller from passing within thirty feet of the west end of the pier, going slow, if there was water enough to float her?

Ans. In her drawing so much water, she could not turn so short.

Ques. How close could she come to it, going slow?

Ans. If going slow, within fifty feet of the north pier, if there was water enough.

SIMEON TOWNSEND.

Subscribed and sworn to before me this 8th day of December, 1864.

GEO. COGSWELL,
Notary Public in and for the State of Wisconsin, Milwaukee Co.

115 DISTRICT OF WISCONSIN, *ss:*

The foregoing deposition of Simeon Townsend was taken before me, pursuant to annexed stipulation, on the 8th day of December, 1864; the said Townsend having been by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, as to the matters to which he might testify in said action; that the same was reduced to writing, partly by myself and partly by E. Mariner, esq., with the assent of the counsel, and was read over to said Townsend, and subscribed by him in my presence.

GEO. COGSWELL,
Notary Public in and for the State of Wisconsin, Milwaukee Co.

The deposition of Orlando Alexander, taken on the part of the libelants, by consent, before Geo. Cogswell, esq., notary public.

The said Orlando Alexander, having been first duly sworn, testified as follows:

My name is Orlando Alexander; I reside in the city of Milwaukee; I know of the schooner Winslow at the time of the collision; I superintended the unloading of her cargo of oats; the oats were very wet and badly damaged, except about two hundred and fifty bushels, which were partially wet; they were unladen, put into a warehouse, and were selected out so as to realize the largest price for them.

The nett proceeds of the oats was $1,965; the gross amount of sales was $2,167 10; expenses, rent of warehouse, $116 62; storage of dry oats, $1,286; two barrels of salt, $5; Green & Morton' bill of repairs on warehouse, $13; Knight's bill for selling and delivering the oats was $54 14.

I paid out of said proceeds on general average account $261 50, leaving nett proceeds $1,703 98. The expense of taking the oats out was included in the $261 50. The value of the oats at the time of the loss was sixty-seven per bushel. There were 19,450 bushels lost.

ORLANDO ALEXANDER.

116 STATE OF WISCONSIN, *Milwaukee City, ss:*

Subscribed and sworn before me this [this] 10th day of April, 1865.

GEO. COGSWELL,
Notary Public in and for the State of Wisconsin, residing in Mil. Co.

Deposition of Christian Oleson and Hulver Carlson, on the part of the libelant, taken before me, John M. Miller, a commissioner of said court, by consent of said respective parties, this 9th day of August, A. D. 1865, John H. Van Dyke appearing for the libelants, and Ephraim Mariner for the respondents, claimants.

CHRISTIAN OLESON, being duly sworn, deposed and said as follows:

Question. What is your name, age, occupation, and residence?

Answer. My name is Christian Oleson; my age, thirty-five; occupation, ship-carpenter; and my residence is Milwaukee.

Ques. How long have you been a ship-carpenter?

Ans. For fifteen years.

Ques. Did you know of a collision between the propeller Alleghany and the schooner Henry C. Winslow, in the Milwaukee river, at the Straight Cut, in the spring of 1864?

Ans. Yes, sir; Allen, McClellan & Co. repaired the Winslow, of which firm I am a member.

Question. State what injury was done to the H. C. Winslow by the collision, where she was struck, how many timbers were cut through, and generally as to the injury.

Ans. She was struck from twelve to fourteen feet from the stem on the larboard bow. The hole was eight feet across. The hole was seven feet deep from the sail to the bottom of the cut. There was two breast-hooks or knees, twelve by twelve, cut clean off. There were three beams cut off on the upper deck, and two beams on the forecastle deck down below. The lower beams were 12 x 12 and the upper beams were 8 x 8. There was six or seven, I can't tell which, frames, 12 x 10 below and 10 x 6 on top, broken, bursted right in. The rail 12 x 6, plank sheer the same size, and planks four streaks, 4 x 5. These are outside, and below they are three inches clear down to the keel; these were all broken clear in, down to seven feet. The cut reached within three or four feet from the keel. The photo-
117 graph now shown me is the appearance of the vessel after the collision, after the anchors were carried aft, so as to light her and raise the cut above the water, and her head-gear was off. The photograph shows the number of plank below the plankshear cut off to be fifteen. There were three or four below that cut into, making seven feet from the plankshear, or ten from the rail. The whole ceiling was cut in with it, and the inside planks, and the windlass was taken out of her, and one of the bits and one of the knees that stand in front of her was taken out of her. The cut-in was past the centre of the vessel and brought up on one of the deck beams. The line "A," on the following diagram, represents the angle of the cut with the vessel, as nearly as I can remember.

[Diagram omitted. For diagram see page 117 of the original.]

Ques. What was the condition of the bow of the Winslow and the timbers cut through and broken?

Ans. The condition was pretty good, and sound enough to go a good many years. The timbers were sound.

Ques. How did the bow of the Winslow compare with other vessels of her class?

Ans. They compare first-rate to her age. I don't know how old she was, but she had a good bow. Her bow was strong.

Ques. If the propeller Alleghany had been standing still when the vessel came in contact, at or about the angle shown by the foregoing diagram, what would have been the effect upon the vessel, the vessel moving forward in tow at three or four miles an hour?

118 (Objected to by Mr. Mariner, as it does not appear that the witness is an expert.)

Ans. I think it would have been very little had the propeller being lying still, because she would have glanced by the propeller and might have hurried her some. It might have carried away her chain plates, or part of the rail or bulwarks. It would not cut into the planksheer, I think.

Ques. How rapid would the forward movement of the propeller have been to have cut through the planks, planksheer, and the timbers you have testified were broken?

(Objected to by Mr. Mariner same as last above.)

Ans. She would have to had pretty good speed, say up to seven or eight knots, because she went in so far.

Ques. Have you ever sailed?

Ans. Yes; I sailed about three years, off and on; in the middle of the summer, about ten years ago, 1854, was the last season I was out.

Ques. Have you had occasion to examine injuries done to vessels by collisions in the course of your experience?

Ans. No; not a great deal

Ques. If the propeller had been stationary, and the vessel in motion at or about the rate of speed mentioned in a previous question when they came in contact, why would the vessel glance off?

Ans. The vessel had plenty of room, the tug was ahead of the vessel, and if the propeller was standing still she would have glanced off, and if she (the propeller) was moving she (the propeller) would have cut in.

Ques. (Above question repeated.)

Ans. Because the vessel would not have come square on to the stem of the propeller at that angle.

Ques. In the answer preceding the last, you state that the vessel would have had plenty of room and would have glanced off; what do you mean by the answer?

Ans. I mean that if the propeller had laid still.

Cross-examined by E. Mariner:

Ques. How old a vessel was the Winslow?

119 Ans. I can't say exactly; about 8 or 9 years old, I should think.

Ques. How many of the timbers that you say were cut off were new timbers?

Ans. They were all in when she was built.

Ques. What is the effect of the lapse of time upon timber in a vessel?

Ans. The best quality of timber will stand longer; as timber gets older it becomes more limber.

Ques. What is the effect upon the toughness of any timber?

Ans. It is not so tough; it makes it brash.

Ques. How long will vessels ordinarily last upon the lakes here?

Ans. They use up pretty well in ten years.

Ques. When an old vessel goes ashore, won't she go all to pieces with the same usage that a middle-aged vessel will stand it?

Ans. Yes, I suppose she would. I had a new vessel go ashore, and she went to pieces in about two hours.

Ques. Would an old vessel stand as long in the place where the new vessel went to peics?

Ans. May be a few minutes' difference.

Ques. What were the circumstances that would make a new vessel go to pieces as soon as an old one?

Ans. Because her bottom was as good as new.

Ques. Would that make her sides stand because her bottom was good?

Ans. Yes, sir; as long as her bottom is good the sides will stand.

Ques. Where is the ability to resist perpendicular strains in a vessel?

Ans. Main keelsons and bilge keelsons is the backbone of a vessel.

Ques. What do you fasten the frames and planks for?

Ans. So as to strengthen a vessel and keep her tight.

Ques. If a vessel has a weak bottom and good sides, will she resist more straining than a vessel with a good bottom and poor sides?

Ans. A vessel with a good bottom and weak sides will stand it longer than a vessel with good sides and poor bottom.

Ques. How did the timbers and the planks of the Winslow break, straight off or splinter?

Ans. They broke in splinters, most part of them.

Ques. Did the deck-beams splinter?

Ans. Yes, part of them splintered and the others just bursted up.

Ques. How many and which ones of the deck-beams splintered?

Ans. The forecastle beam, I think.

Ques. How many pieces did the forecastle beam break into?

Ans. It was splintered into two or three pieces.

Ques. Did it not break in three pieces?

Ans. I think it did.

Ques. Did it splinter up with the grain, or did it break across the grain?

Ans. Part of it broke across the grain, and splintered up with the grain.

Ques. Did any other of her beams splinter?

Ans. Yes, sir, more or less; it is so long ago that I can't remember.

Ques. Did it splinter like new or old wood?

Ans. It splintered like her age.

Ques. How much of the timber was with the vessel when she came to your yard?

Ans. Yes; they were pretty much there.

Ques. What was the situation of the side of the vessel just back of the cut in her side? Was it in line where it had been, or was it pried out?

Ans. It was pried out some.

Ques. Have you any idea how heavy the Winslow was with her load at the time of the collision?

Ans. I have no idea of the weight of her.

Ques. Have you any idea of the weight of the Alleghany with her load?

Ans. I have not.

Ques. If the Winslow had been swinging toward the propeller as well as going forward, would it have made any difference in the liability of the Winslow's glancing off, in your opinion?

Ans. Yes, sir; it would.

Ques. What is the beam of the Winslow?

Ans. About twenty-six feet, I think.

Ques. What was the width at the point where the Alleghany struck her?

Ans. About fifteen or sixteen feet.

121 Ques. How far do you think it was from the bowsprit to where the Alleghany struck her?

Ans. That is pretty hard to tell; somewhere about ten feet, I suppose.

Ques. Would she be more than ten or twelve feet across at the extreme forward part of the cut in her side?

Ans. I should think a little more. How much more, I can't say.

Ques. What difference would it have made if the Alleghany entered the side of the Winslow at all, at the distance she would have entered, whether the Alleghany was in motion at all or going at any speed less than the speed of the Winslow?

Ans. I should think it would have made considerable difference.

Ques. What makes you think it would?

Ans. Because the Winslow was going out and the propeller was coming in; both going, would strike heavier.

Ques. Which would be most like to glance from the Alleghany if she were still, a new vessel of the size of the Winslow, in the same place, or an old one?

(Objected to as immaterial.)

Ans. A new one, I suppose.

Ques. What makes you think so?

Ans. Because she would be a little stronger.

Ques. Any other reason?

Ans. No other reason.

Ques. How would her strength make her glance?

Ans. Because she (the propeller) did not come right across her bow.

Ques. What must she do to make her glance?

Ans. Go right ahead. I see no other way to make her glance.

Ques. Would that have made her glance at that angle of meeting which you have given?

(Objection, indefinite as to motion and position of respective vessels.)

Ans. Yes; I think it would if the propeller had lain still

Ques. What would have become of the bow of the propeller if she had lain still and the Winslow had gone ahead?

Ans. She would not have touched her much.

Ques. You have heard the stories of the master of the Winslow or talked it over with him?

122 Ans. He talked with me about it at the time of the repairs, but I don't recollect much about it.

Ques. Did you see the Winslow after she sunk, and before she was moved?

Ans. Yes, sir, I see her.

Ques. How was she lying between the piers?

Ans. I think she was lying at an angle pretty near across the new cut.

Ques. Which end of her was nearest the pier?

Ans. Her stern was nearest, and it was close to the opening between the iron and wooden railing on the pier.

Ques. Which was up stream, her head or stern?

Ans. I think her stern a little.

Re-examined by Mr. Van Dyke for libelants:

Ques. Do you know how the vessel came into that position after the collision?

Ans. The propeller pushed her back some; that I was told; I don't know.

Ques. At what part of the cut in the bow of the Winslow did the propeller strike?

Ans. It was pretty well forward of the middle of the cut, heading towards the stern.

Ques. How was the line of the forward part of the cut, square off or jagged and broken?

Ans. The cut was glanced off a little, and the rest was jagged and broken.

Ques. You state that the side of the Winslow, on the after perpendicular line of the cut, was pried out some; what occasioned that to be pried out?

Ans. Two reasons for that; one because the propeller glanced off a little, and the other because it was in the bluff of the bow of the vessel; and when her planks were cut off, it sprung out a little, the propeller stem acting as a wedge.

CHRISTIAN OLSEN.

Subscribed and sworn to before me this August 9th, A. D. 1865.

J. M. MILLER,
U. S. Com. Dist. Wis.

123 CULVER CARLSON, being duly sworn, deposed and said:

My age is thirty-nine years. My residence is Milwaukee. My occupation is book-keeper for Allen, McLellan & Co. I have been book-keeper two years and three months for them. Before I was book keeper for them I was sailing on the lakes, in the capacity of cook to captain, all along. I was first mate for two years, and captain one year in a little schooner of my own. Was mate on board the schooner Josephine Lawrence. I have sailed seven or eight years. I saw the schooner Winslow in the spring of 1864, after her collision with the propeller Alleghany. I saw her down to the Straight Cut before she was repaired. I did not go aboard of her until she towed up to a propeller dock below G. D. Norris' sail-loft. I saw her after she was brought to Allen, McLellan & Co.' ship yard for repairs. Her rail was cut through, the plankshеer, the three breast hooks, and ceiling, and about fifteen streaks of the planks below the plankshеer, three or four beams in the main deck; the windlass unshipped, and the windlass bitts stove in.

Ques. What was the condition of the bow of the Winslow as to the soundness of her timbers and strength of bow?

Ans. I cannot say anything about the timbers, for I had all I could do in the office, and was not much around the vessel; but her plankshеers and sail was sound that I seen, and also the beams; the rest of her I did not look after. I would not have looked at that, but the captain showed it to me. I cannot say anything about the strength of the bow, as I was not very often in the yard at that time; did not examine her.

Ques. Did you see the size of the hole knocked into the bow of the vessel?

Ans. Yes, sir.

Ques. With what force and speed must that vessel have been struck by the propeller in order to have the propeller penetrate her so far through the timbers you have named?

Ans. The headway of these two vessels must have been from eight to nine miles; that is, the united speed.

Ques. Suppose the Alleghany was standing still in the Straight Cut, and the Winslow had been towed against her stem at the angle shown in the diagram in the deposition of Christian Oleson,
124 would the stem of the propeller have penetrated the bow of the Winslow; and if not, why not?

(Objected to by Mr. Mariner, as it does not appear that witness is an expert.)

Ans. According to my knowledge about navigation, I think that if the Alleghany had laid still, that she would not have penetrated the side of the bark Winslow, on account of it being a glancing blow.

Ques. Would it make any difference whether or not the bow of the Winslow in tow was being drawn towards the stern of the Alleghany or going directly ahead, the angle of contact being the same?

Ans. In my judgment, it would not have made much difference.

Ques. Would it make any difference?

Ans. We sailors think that the stern comes after the bow; it would make no difference.

Ques. What is the usual rate of speed in towing out of the river?

Ans. The rate of speed, for a grain-loaded vessel of her size, from three to four miles.

Cross-examined by Mr. E. Mariner:

Ques. Have you any idea of the weight of those vessels or either of them?

Ans. I can't say; I don't know.

Ques. Have you any idea of the force that would be necessary to cut the Winslow down as she was?

Ans. By the soundness of the rail, plank sheers, beams, and breast-hooks, I should say that it would take about eight or nine knots headway to cut the Winslow down as she was. I could give the force if I knew the weight of both of them.

Ques. Have you any idea what that force was?

Ans. As I have said, I think it would have taken the bark Henry Winslow to run with eight knots speed on to anything stationary in shape of a propeller's bow to cut such a hole as was forced by the collision.

Ques. What made you say so?

Ans. Because the strength of the bark Winslow would have stood a less force.

Ques. How do you know?

125 Ans. By the appearance of her rail, plank sheer, breast-hooks, and beams, for any less force to have done that damage. If the bark Winslow had come in contact with the propeller Allegheny, and from three to four knots headway, she would have glanced off with very little damage.

Ques. Can you give any other reason then that?

Ans. Because I have been in several vessels—I can't mention them all, one was the schooner New Hampshire, of Chacago—when we have run against piers with the bluff of the bow at the rate of say five knots, and still the blows has not caused any more damage than split the rail, only brushed it in a little, and one stanchion and some of the head-gear carried away.

Ques. What kind of river was that, and where?

Aes. It was a crib pier in Grand river.

Ques. Whereabouts in the river?

Ans. It was right about the sand bluff there; about half-way from the end of the pier to the town on the south side.

Ques. Did you hit broadside with the pier?

Ans. It was a bend in the pier, a corner sticking right out.

Ques. How large a vessel was she, and where were you going?

Ans. She was from 80 to 100 tons, and were going to Muskingum.

Ques. What load had she in?

Ans. She was light.

Ques. What was the pier built of?

Ans. Pine or oak, I don't know which.

Ques. Is there any other reason that you have got for saying that the Winslow must have stood less force than that?

Ans. Nothing more than common sense teaches me.

Ques. Now, how much force would the rail of the Winslow have stood?

Ans. Well, the rail—it all depends on the stanchions—I should think that she would have to run from a mile to a mile and a half before she would break it.

Ques. Would she have not broken it if she had run for a quarter of a mile against anything stationary?

Ans. Not the rail of that size and strength.

Ques. Was the rail of the Winslow broken or cut off, or partly cut and partly broken?

126 Ans. The piece I seen on the dock was partly cut and partly broken.

Ques. How was the propeller stem covered, that is, the extreme end of it?

Ans. They generally have an iron plate on the stem. I do not know about this one.

Ques. Had the plankshеer you saw cut the appearance of being cut by such an iron plate.

Ans. I did not look so close on it.

Ques. Did you notice the appearance of the cut in the Winslow?

Ans. I did not pay much attention to her. All I looked at was the rail, plankshеer, beam, and breast-hooks.

Ques. Did the upper edge of the cut on the bow of the propeller have the appearance of being cut off with a blunt piece of iron, like that ordinarily used on the bow of a propeller?

Ans. I did not examine her; I had other business to attend to.

Ques. Did you ever see the bow of the Alleghany?

Ans. I passed by her a little after the collision, but all I took notice of was that there was some paint rubbed of her bows; a few spots as large as your hand were rubbed off, may be larger?

Ques. How is the Alleghany, a sharp or a blunt vessel?

Ans. Pretty sharp.

Ques. Which side of her was you?

Ans. I think I saw the port side. She headed down the river, I think the north side, a little below Norris'. I am not certain; I see so many propellers.

Ques. How far would a blow of four hundred tons force, administered by an instrument as sharp as the bow of the Alleghany, cut into the bow of the Winslow?

Ans. I can't say; I never tried the experiment. After I tried it, I could say better.

Ques. Would it make any difference whether the blow was struck with a piece of wood or iron, in the distance it would penetrate?

Ans. The same heft and the same force would go about the same distance.

Ques. Would not a blow of four hundred tons, with an instrument

as sharp as the bow of the propeller, faced with iron, have cut the Winslow through to her keel?

127 (Objected to as indefinite as to the angle of contact, and immaterial.)

Ans. I could not estimate it.

Ques. Would it make any difference, in your opinion, whether the face of the instrument with which the blow was struck was thick or thin?

Ans. The sharper the bow of a vessel is, the further it can penetrate and can better resist a blow.

Ques. Have you any idea what would be the force that the bark Winslow would inflict, moving at the rate of four miles an hour?

Ans. I have not.

Ques. Have you any idea if she moved at eight miles an hour?

Ans. It 'depends upon whether she was light or loaded; I can't guess either.

Ques. How many other [other] vessels have you been in that had collisions?

Ans. I can't tell; I have been in a good many scrapes. The schooner D. R. Holt was trying to run into the port of White Lake, at two o'clock in a stormy night; we come with about five miles headway, and we came in on the bar; we got three heavy breakers, and the last one took and hove her right against the corner of the pier; she struck so hard, the men fell right down on the deck. She struck abaft the fore rigging. We come in all right. It did not hurt her any. We glanced off the pier.

Ques. If you have had any other serious collisions, state them.

Ans. I have had none.

HALVER CARLSON.

Subscribed and sworn to before me this 9th day of August, A. D. 1895.

J. M. MILLER,
U. S. Com. District of Wis.

WILLIAM KELLY was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the [the] cause aforesaid. I carefully examined the said William Kelly, and he did thereupon depose and say as follows, to wit:

1st interrogatory. What is your name, age, occupation, and place of residence?

Ans. My name is William Kelly; am of lawful age; my occupation is sailing; lately I have been tugging; I live in Chicago.

128 2d interrogatory. How long have you been master of a tug, and where have you sailed a tug?

Ans. I have been master of a tug since 1853. I have sailed a tug in Chicago, Milwaukee, and all around the lakes.

3d interrogatory. Have you been the commander of a tug in the Milwaukee harbor since the opening of the Straight Cut? If yea, when and what period of time?

Ans. I have; I was there in 1862 or 1863, on the tug Cleveland, for about four months, and also last season four months and a half, sometimes the Muir and sometimes the Davison.

4th interrogatory. In entering the Straight Cut from the river with a vessel in tow of the size of the Winslow, what caution has to be exercised, what danger, if any, guarded against, and how near can you run to the west end of the south pier on the usual track in towing out?

Ans. There is plenty of room there to meet and pass anything except City of Buffalo propeller. Last season, if you had your vessel turned, you could run within fifteen or twenty feet of the west end of the south pier.

5th interrogatory. Is there any difficulty or danger, whilst in the act of making the turn in the knuckle of the bend, in heading too close upon the south pier; if yea, what is the danger to be guarded against, and what has been your experience on the subject?

(Objected to by proctor for respondents that his experience is immaterial.)

Ans. There is danger by getting too far down to the southward. I have had trouble nights turning heavy vessels, by getting too far down on the old river-bed—the old channel. There is an under tow from the lake in and out about every little while, and in the night I could not see the lake water coming in; that is what I used to go by; through that the current would carry vessels down on this river-bed and make it hard to turn.

6th interrogatory. Where, in reference to the arrow on the map before you, do you commence to make the turn from the river into the Straight Cut, and at what point, with reference to the map, is your turn completed?

Ans. That arrow is supposed to be the middle of the channel, and bent in the shape the turn is supposed to be made. Between 66 and the warehouse above, one-third of the way from the bank, I would commence to make the turn, providing the river is clear, and
129 would go along on the line of the arrow, heading for the south pier, and straighten up at the entrance of the cut.

7th interrogatory. If you saw a propeller coming in to the east end of the harbor, when you started to make your turn, how would that affect your course in making your turn?

Ans. I should check my boat, that is, if I was not under check and going very slow at the time; I would blow one short blast with the steam-whistle; if answered with one blast by the approaching boat, and had time so that it could be done, I would give the approaching boat two-thirds, or over one-half, at least.

8th interrogatory. Is it usual for vessels to run as far southwest as the letter "O," marked on the map, in making the turn from the the river to the Straight Cut, and could they run that far to the southwest with a loaded vessel in tow with safety?

Ans. It is not usual, as far as I have seen, with loaded vessels. I would not do it. It might be done sometimes, but I would not like

to do it. I will not say it is impossible. I have been down that far myself.

9th interrogatory. What would be the necessity of a vessel going over that far in meeting a propeller with the breadth of channel between the piers, the breadth of the propeller's beam being but thirty feet or thereabouts?

Ans. I should not think there would be any, both managed and understood each other.

10th interrogatory. Can a tug, with a loaded vessel in tow, in the act of making the turn from the river to the Straight Cut, stop the tug with safety to the vessel?

Ans. Yes, sir, if he gets time and knows he has got to do it.

11th interrogatory. What would he have to do to stop her, and what time would it take to accomplish it?

Ans. There are two or three ways of stopping her, one to get alongside if he has time, and another is to let the vessel slue the tug around, the tug's head to the vessel's stern; I think either of them is a risk to the tug and vessel; if the vessel was going middling fast I should say it would take from four to five or three to five minutes to stop her.

12th interrogatory. Where would they bring up in being stopped either way?

130 Ans. It might be possible they would swing across the channel. In backing the vessel, it would slue her head around.

Cross-examination by proctor for respondent:

1st cross-interrogatory. What is the usual course of a propeller coming in, in making the turn?

Ans. She heads in the cut about due west.

2d cross-interrogatory. When they get close to the west end of the south pier, how close to the south pier do they run before they turn?

Ans. If they are meeting nothing they can go as close they mind to till they get up to the upper end of it. If they are meeting nothing they do that to make a longer turn by keeping on the south side, and I don't know they are entitled to more than the north half coming in; it is only done to give them a bigger turn.

3rd cross-interrogatory. Where do they commence turning; how far east of the west end of the south pier?

Ans. Not any two men handle a boat alike; some boats may be loaded; a man with a boat light would handle it different from the same boat loaded, at least I should. I should say, being in mid-channel about three hundred feet, they would commence putting their wheel over, that is, east of the end of the pier.

4th cross-interrogatory. Which run closer to the south pier, light or loaded boats?

Ans. Heavy-loaded boats, I should judge.

5th cross-interrogatory. Do not all heavy-loaded large boats run as close to the south pier as they can before they commence to turn?

(Question objected to by proctor for libellant as immaterial, if noth-

ing is in the way; and it is a question of law where she should have been if another craft had a right to the centre of the channel.)

Ans. They might be little to the southard of the middle of the channel before they make the turn, if meeting nothing; I can only say from what I have seen.

6th cross-interrogatory. Do not all heavy-loaded large boats run as close to south pier as they can before they commence to turn?

Ans. I have not seen them all come in; several came in and out without my seeing them.

7th cross-interrogatory. Do not all that you have seen of
131 the large heavy-loaded vessels run as close to the south pier as they can with safety before they commence to turn, in order to get a long sweep?

(Question objected to by proctor for libelants, for the same reason as the last but one above.)

Ans. I never had any trouble passing them on their port side as they were coming in—in other words, between the south pier and them. I saw the propeller Kenosha come in one day, and she rubbed against the pier all the way coming up. It was a big gale of wind from the north or northeast.

8th cross-interrogatory. Have you ever seen any heavy-loaded boats or propellers come in here?

Ans. Yes, sir.

9th cross-interrogatory. Do the large boats have to back up before they can make a turn or get around, occasionally?

Ans. I have seen some of them, light boats, with the wind to the eastward or northeast.

10th cross-interrogatory. Does not the Dean Richmond, when she comes in there loaded, always have to back up?

Ans. I have never seen her.

11th cross-interrogatory. So you say it is not usual for heavy-loaded propellers to go as near the south pier as they can before making the turn?

Ans. I have never seen any of them go as close as they could. I never saw any of them go as close as twenty-five or thirty feet.

12th cross-interrogatory. Don't all the heavy-loaded boats go as near as forty feet when they can?

Ans. No, sir.

13th cross-interrogatory. Did you stop a vessel just in the draw of the Spring-street bridge, going up, last summer?

Ans. I stopped them several places; I don't recollect Spring-street bridge in particular.

14th cross-interrogatory. How long were you in stopping a vessel there, if you stopped it?

(Proctor for the libelant objects to this testimony, for the reason that it is impertinent to the issue, and no cross-examination.)

Ans. Three or five minutes.

132 15th cross-interrogatory. Are you sure that it was a minute and a half?

Ans. I am not.

16th cross-interrogatory. How far do you understand the point "O" on the map to be north from the line of the south pier produced?

(The proctor for the libelant directs the witness to look at the map.")

Ans. I should judge about ten feet to the northward of the north line of the south pier.

17th cross-interrogatory. How far to the westward of the west end of the south pier?

Ans. From one hundred to [to] one hundred and fifty feet.

WM. KELLY.

JULY 29, 1864.

The defendants called—

JOHN COLLINS, being duly sworn, deposes and says:

I am 28 years of age; I have no particular place of residence; I am a sailor; I was on board the propeller Alleghany at the time of her collision with the Winslow in May last; I was wheelsman; I had been on her since the opening of navigation; I am a sailor fourteen years now; I had not been wheelsman on these lakes before this season, except that I made one passage from Chicago to Buffalo; I have steered on steamships on the seaboard, and have been on sailing vessels acting in that capacity; I was in the wheelhouse of the Alleghany at the time of the collision; my partner was with me, Frances Wilbaske; I was steering the Alleghany; I had been at the wheel from four o'clock that morning; the Alleghany was coming from Chicago; I got to the port of Milwaukee about seven o'clock in the morning; I should judge we were running about ten knots an hour before we came to the harbor of Milwaukee; as we were entering the harbor, and about half a length of the vessel outside the light-house, we checked down; I did not observe the Winslow before we checked down; when I first saw the Winslow she was a little up stream from the bend, coming down; before we stopped the engine we were about half-way in the Straight Cut from the light-house; I heard the tug that had the Winslow in tow signal the Alleghany by blowing one whistle; I think the engine was stopped when
133 she blew the whistle, but am not certain; shortly after I saw the Winslow, as she was in tow, we were half-way between the light house and the end of the pier, and the engine of our propeller was stopped; the tug blew one whistle, and we answered her with one whistle, and the captain told us to put our helm hard apert; we did so; in a little while afterwards, perhaps about a minute, we commenced backing; at this time the Winslow was coming around the bend, and she had her mainsail part up, and I think her fore-and-aft foresail; she had those sails about half set; the tow boat was ahead of her; he slacked up on his tow-line, and the tow-line was lying slack down on the water; she signalled again, and he went ahead with his boat so that he straightened out his tow-line; when he went ahead the second time, the port bow of the vessel came right

against our stem; previous to his striking us, I should judge we were backing our engine from a minute and a half to two minutes; we were on the stand-still when the Winslow struck us; I should judge our course was west by southwest; we were about the centre of the cut, as near as I could judge; the propeller was pretty nearly loaded; I think we were drawing about eleven feet two inches; the Alleghany, I do not think, touched bottom that morning, but she was slow in answering her helm; I should think we were probably in line with the beach line of the lake, as represented on map "A," when the collision took place; the tug was on our port bow when the two vessels collided; she was, I suppose, ten or twelve feet from the boat, on her port bow; the tug crossed our bows about fifty feet distant; I should judge the engine of the tug was working pretty fast when the Winslow struck us; I should judge, from the way he jerked the Winslow along the second time, he was going at full speed; when the tug crossed the bows of the Alleghany, after she started ahead the second time, she swung round; the swinging round of the tug drew the Winslow out of her direct course, and toward the Alleghany; the tug and the Winslow had just entered in the Straight Cut when the collision took place; they were past the bend, and headed down the Straight Cut; he was just pointed into the Straight Cut, but had not got far in at the time; I should judge we were near the centre of the cut, and more to the north pier than the south pier, if any-
134 thing; we could not go farther north without danger of going aground; we had to go astern some distance before we could get close to the pier, and in going astern we touched; I should think we went astern nearly twice the length of the vessel before we got close to the pier; I think the Winslow, in coming into the Straight Cut on the turn, was pretty near the centre of the stream; the Winslow came a good way down the cut, probably twice the length of herself, before she went aground; when the tow-line was slacked he straightened out on his tow-line again, and jerked the vessel along so that her port bow came against our stem; the effect of the tug sheering round under our bow was, as he had a pretty short tow-line, to bring the vessel's bow right against our stem; after we got on between the piers we kept on a straight course up the harbor, about the centre between the piers.

Cross-examination:

I don't know the exact distance between the propeller and the north piers, I should think nearly a hundred or seventy-five feet from the course we were steering to the north pier; but I can't say what is the distance between the piers; I can't tell what was the distance between where we were steering and the south pier; all I know is, we kept as near the centre as we could between the piers.

Ques. You have answered that you think it is seventy-five to a hundred feet from the line you were pursuing up the Straight Cut to the north pier, and that you were going up the centre of the Straight Cut as near as you could. Now state how near that would bring you to the south pier.

Ans. I should judge we were in the centre of the stream, and that would make us an equal distance from each pier.

Ques. You answer, as near as you could judge, you were in the centre of the stream. Will you state from what you do judge of the locality?

Ans. By looking from each side of the vessel.

Ques. Now, do you not know that you were two-thirds over to the south pier?

Ans. No.

Ques. Will you swear that you were not more to the southward than to the northward of the centre of the stream that morning coming in?

135 Ans. As near as I can judge, we were in the centre of the stream.

Ques. Will you answer the question last put to you?

Ans. I will swear that we were about in the centre, as near as I could judge.

Ques. Will you answer the question put to you?

Ans. I will not swear that there was not a few feet of difference. I think the beam of the Alleghany is 24 or 25 feet. I think the Alleghany headed about in the same direction immediately after the collision that she did immediately before it. That course, by our compass, was west by south. We had been running the same course from time we entered the piers until we struck.

Ques. When you stopped the propeller and backed, did that affect the direction of her head?

Ans. Yes; it caused her to come closer to the north pier after she went astern some distance.

Ques. Do you mean by "astern after she went some distance" before or after the collision?

Ans. After the collision.

Ques. Did the propeller answer her helm well that morning coming in?

Ans. Yes; she answered her helm sufficiently to keep her in the centre.

Ques. What do you mean by your answer?

Ans. I mean if she did not answer her helm well we could not keep her straight between the piers.

Ques. You have testified that you kept all the way up the centre of the Straight Cut or thereabouts, keeping the same course west by south until the time of the collision; that there was an order to put the helm aport, and that you did put it hard aport; and the vessel steered well. Will you be good enough to explain yourself to us landsmen?

(Objected to, in that it assumes that the witness has testified that the vessel steered well, when the fact is that he testified that she was slow in answering her helm; she steered slowy.)

Ans. I did not say the vessel steered well.

Ques. Did the Alleghany steer well that morning coming up?

Ans. She was slow in answering her helm.

Ques. Did she steer well or not?

136 Ans. She will answer her helm, but she is slow in answering her helm. In shoal water she wouldn't answer her helm quick, but in deep water she steers well.

Ques. (Question above repeated, substituting the word "slow" for "well," and an answer required.)

Ans. I will answer as well as I can. When you give her the helm, she will answer slow in shoal water, that is, she will not answer quick; but in deep water she steers well.

Ques. Is that the only answer you can give to that question?

Ans. That is about as plain as I can make it.

Ques. Is not the English of all you have been talking about, that when you put your helm hard aport she did not mind it, or how did she keep the same course?

Ans. I have always found her to steer better from the mouth of the pier up to near the bend, but up at the bend, whether the water is shoaler there or not, I have found that she did not answer her helm so quick.

Ques. Now, witness, do you believe yourself that is an answer to my question, and that it comes within a gunshot of answering it?

Ans. That is the most straight forwardanswer I can give you; if I could answer any plainer I would do so.

Ques. Do you believe that the Alleghany can run the length of those piers in the centre of the stream with her helm hard aport?

Ans. No; she cannot.

Ques. How far had you entered the piers when the helm was put hard aport?

Ans. We were getting close to the vessel and near the bend.

Ques. How close were you to the Winslow before you put your helm hard aport?

Ans. Perhaps two or three lengths of the vessel, perhaps more. The captain gave the order to put the helm hard aport; he was standing on the top of the pilot house.

Ques. How far is it from the outer end of the harbor piers to the point of collision of the two vessels?

Ans. I don't know. I would say 800 feet, more or less.

Ques. How certain are you that you were three lengths

137 of the vessel from the Winslow when you were ordered to port?

Ans. I am not certain. It might be three or four lenghts. It was more than two lengths, I am certain.

Ques. Will you now state, according to your best belief, the distance you were from the Winslow when the order was given to port the helm?

Ans. I should say about three lengths of the vessel, to the best of my belief.

Ques. At what speed was the propeller going when this order was given?

Ans. Her engine had been stopped then, and she was going slow.

Ques. Will you answer the question I put to you or not?

Ans. Three to four miles an hour, to the best of my belief.

Ques. What was done before the collision, after this order was given to port the helm?

Ans. The captain rang the bell to back her.

Ques. When, and how long after the order to port the helm, was the bell rung to back her?

Ans. About a minute; it was very shortly after.

Ques. Did the propeller have time to answer her helm, from the order given to put her aport before the bell was rung to back her?

Ans. Yes, sir; she was answering slowly.

Ques. Had she perceptibly changed her course when the bell was rung to back her?

Ans. Yes.

Ques. How much?

Ans. From a quarter of a point to half a point, to the best of my belief.

Ques. How much will she change her course just where she was in running twice her length?

Ans. From a quarter to a point. She could not have run more then twice her length that morning from the time the order was given to port until the bell was rung to back her.

Ques. You state that the propeller, according to your best judgment and opinion, was about three lengths from the Winslow when the order was given to port the helm; the Alleghany was running three to four miles an hour; that she ran about twice her length,
138 changing her course about a quarter of a point, when the bell was rung to back her. Will you now state within how many times the length of the propeller, loaded, going three or four miles an hour, reversing her wheel, would bring her to a stand-still?

Ans. I should say if she backed strong that she would not go more than twice her length of herself before she would stop her headway.

Ques. My question was, before you would bring her to a stand-still; you equivocate by saying deaden headway?

Ans. I should say twice the length of herself.

Ques. You state that you were running west by south in the Straight Cut coming in, and that the Winslow had straightened up. Will you now tell us, by your own statement, how could the Winslow get across your bow if, as you state, the propeller was at the time backing?

Ans. I could state two reasons for that. One was, the tug could sheer her across in towing her with a short line. The other would be bad steering on the part of the vessel; in my opinion, either would be good cause for the vessel coming across our bow.

Ques. Which bow of the vessel was that tow-line attached?

Ans. I am not certain, but think it was the port bow.

Ques. With that line attached to the port bow of the Winslow, the tug towing her to the southward of your vessel, how could she sheer the Winslow across the bows of the propeller?

Ans. With a short line, she could, the tug-boat keeping to the

southward, or by the Winslow keeping his helm aport, that would make her keep to the southward.

Ques. Is that the only explanation you can give of the matter?

Ans. That is the only explanation.

Ques. You have testified that you checked your engine just before entering the harbor piers, that you stopped the engine about half way up the piers. Would the effect of stopping the engine be to diminish the speed of the vessel?

Ans. It would.

Ques. Are you sure that that would be the result for the first two or three lengths of the vessel?

Ans. She would go slower.

Ques. If you are running at ten knots an hour loaded, at or about the time you entered the Straight Cut, and did not reverse your
139 engine, but only checked and stopped, as you have stated, until you came within a length or two of the Winslow, how could your vessel come to a stand-still, from the distance she run after entering the harbor?

Ans. She was checked down before she entered the piers, and stopped after she got a little more than half way in, and then run a couple of lengths of herself and commenced backing; I should judge she would be at a stand-still when the collision took place.

Ques. How was the current in the river that morning, in or out?

Ans. I can't say.

Ques. Was there any current?

Ans. I don't know; I should think, however, from the way the wind was, the current was out; the wind was southwest.

Ques. With the speed at which you were running when you entered the harbor piers, if the engine had not been reversed, but merely slackened and stopped, as you have stated, would not that propeller, loaded as she was, have made at least three quarters of a mile, with that motion in the river, just as she was?

Ans. I don't think she would; I think the wind from the southward and westward, as it was, would throw her on the north pier, or that spit or shallow part that is there near the bend.

Ques. Suppose she had not got anything to interfere with her, would she not go under that headway three quarters of a mile?

Ans. I should think not, owing to the wind.

Ques. How far would she go?

Ans. She would not get to the bend with the wind as it was; I am not so well posted as to the propellers, and the action the engine has as to stopping speed within a given time; I am more accustomed to sailing vessels; my experience on propellers has been acquired within the last eight or nine months.

Ques. Did you anticipate a collision that morning?

Ans. No. I did not.

Ques. When did you first suppose you was going to have one?

Ans. When we commenced backing, and when the tug straightened on the tow-line the second time, I saw that it was impossible to keep clear.

Ques. Where did you expect the tug to pass you if she did not go to the southward of you?

140 Ans. I did not know which side of us she was going to pass, but I supposed she was going to the southward; the straightening up of the tow-line gave the vessel more speed, and suppose the shock was greater.

Ques. If the tug had not gone ahead with the vessel, where would have been the point of collision?

Ans. If the tug had not straightened up on the tow-line, the collision would not have amounted to much, as the speed was not so great.

Ques. Do you know any one else that has got the same opinion, and have you not talked it over with anybody?

Ans. I do not know of any one else having that opinion, nor have I talked to any one about it; I did not see the Winslow after she was raised; I think the bow of the propeller went into the Winslow to about her windlass end.

Ques. With the propeller Alleghany not only having come to a stand-still but actually backing, as you have stated, how could her stem be run into the windlass end of the Winslow, by the Winslow's port bow coming against the stern of the Alleghany?

(Objected to as assuming what the witness has not stated.)

Ans. By the headway the tug gave the vessel, there was no jar to the propeller whatever; she went right into her as if she was going into a pile of sawdust; by running against a dock or a pier there is a shock, but there was no shock in this case; the vessel's bow must have been very poor material.

Ques. What is the size of a ship's beam timbers at her bow?

Ans. I saw some six inches thick and a foot wide; I saw some less and some more.

Ques. Would beam timbers in the bow of the Winslow, twelve by ten, perfectly sound, if the port bow of the Winslow had been run against the Alleghany to cut her outer planking in two, cut three of her beam timbers, a plankshеer, and inside plank clear into her windlass ends, including the rail, stanchion, and stringers, inside and out; if the propeller Alleghany was then standing still or backing, would it not have made a perceptible motion on board the Alleghany?

Ans. With all the amount of timbers you speak of, I should think it would; but pine timber, used in the vessels on these waters, would not stand much of a shock?

Ques. Name any vessel on these lakes built of white pine.

141 Ans. I cannot.

Ques. Then explain your answer.

Ans. If there was a shock that morning I did not feel it; but if the timber was sound, as you say it was, or oak, I should think there would have been a shock.

Ques. If the Winslow had been going forward, and ran against the stem of the propeller, the propeller not being in motion, could the propeller, having a straight cut into the vessel, reaching into her wind-

less ends, cutting off her beams, and would not the effect have been to make a raking cut on her sides?

Ans. With slight headway, it might have been a raking cut or glancing off, but with the speed the Winslow had, I think it was sufficient to crush right into her.

On page 6, question marked X, "What do you mean by your answer?" I said in answer, "I mean if she did not answer her helm, we could not keep her straight between the piers."

JOHN COLLINS.

ELISHA LEE, being duly sworn, deposes and says:

I am fifty-six years of age; I am by occupation a steamboat engineer; I have been such engineer 31 years last June; I am now on the propeller Alleghany; I was sailing on her at the time of the collision with the Winslow last May; I was in the engine room at the time; before I checked her down that morning, prior to her entering the pier, she was going about eight mile an hour; checking her is reducing her from sixty revolutions to eight or ten perhaps; after I checked her, and until I got the order to stop the engine, a minute to a minute and a half elapsed perhaps; the next order was to back the engine; I should think it must have been about two minutes after I got the order to stop, that I got the order to back the engine; I had been backing the engine a minute to a minute and a half before the collision; I was backing with a full throttle, that is, all the steam I could give; I looked out the window immediately on the crash, and saw the Alleghany was slewing; that would throw her head to the north and her stern to the south; the window is on the side of the vessel opposite where I stand.

Ques. If the vessel was going forward from three to three and a half miles an hour, and you should back your engine a minute
142 and a half, what would be the effect on the motion of the vessel as she then was in the river between the piers?

Ans. As it was backing from a minute and a half to two minutes, there was not much way on the vessel.

Ques. What would be the effect in the lake?

Ans. More way in the same space of time; you could not stop the vessel so soon.

Cross-examination:

We sailed from Chicago the evening before the collision; we left about 10.20 p. m.; we stopped at no intermediate ports; we carry a clock in our engine room.

Ques. You speak in your testimony about minutes, minute and a half and two minutes, shortly previous to the collision; do you fix the time from actual observation of the time-piece, or how otherwise?

Ans. I fixed them in my mind.

Ques. Are you certain that you made one revolution of the wheel backward before the collision?

Ans. I am.

Ques. How long does it take to reverse the wheel?

Ans. About three seconds.
Ques. What is the order to reverse?
Ans. Two bells.
Ques. What is the order to slack speed?
Ans. Three bells?
Ques. What is the order to stop?
Ans. One.
Ques. Were you paying strict attention to these bells?
Ans. I was.
Question. What was there in your then position, in view of the attention you were giving to your orders, to say that a minute or a minute and a half or two minutes intervened between the respective orders? Tell us how you fix those periods of time.
Ans. By observing what length of time the engine works, and the length of time it stops between the orders.
Ques. Is there not a great deal of guess-work about the time you have fixed?
Ans. I think not.
143 Ques. Will you please tell us how you make your engine fulfil the place of a time-piece?
Ans. By the revolutions.
Ques. You answer on page 18 thus, "I should think it must have been about two minutes after I got the order to stop the engine, that I got the order to back the engine." Will you please tell us how the revolution of the engine enabled you to fix that period when it was stopped?
Ans. I fixed that in my mind.
Ques. How did you fix it in your mind?
Ans. From the time of stopping until I received the order to back.
Ques. How did you get at that time in your mind?
Ans. Judging from the time between the bells.
Ques. Don't you think there is a little guess-work about that?
Ans. There is not.
Ques. You are just as certain of your time as if you counted the revolutions or looked at the clock, are you?
Ans. I am.
Ques. Are you just as certain that two minutes just intervened between the order to stop and the order to back as you are that you backed at all?
Ans. I am.
Ques. Are you just as certain as you are of the fact that you were making but eight knots an hour when you entered the river?
Ans. I am.
Ques. How many revolutions were you making before you got the order to check the vessel?
Ans. Somewhere from forty-five to fifty.
Ques. How do you know it was forty-five or fifty?
Ans. By observation.
Ques. What do you mean by the reply "observation?"

Ans. Out in the lake we made from fifty to sixty; in shoal water we make less.

Ques. When did you make less, before or after you checked down?

Ans. Before I checked down.

Ques. Did you count the revolutions at all that morning?

Ans. I did not.

Ques. How much steam did you carry from Chicago to this
144 port before getting into shallow water off this port?

Ans. Sixty-five to seventy. Before entering the port we let it run down to about sixty-five.

Ques. How many knots will sixty-five to seventy make an hour?

Ans. Very near ten.

Ques. How many from sixty-five?

Ans. Sixty to sixty-five, about nine.

Ques. Would not the propeller go faster in shoal water under a check than carrying a full head of steam?

Ans. I don't think it would.

Ques. Do you know how much steam you were carrying when you entered the piers?

Ans. About sixty-five.

Ques. Do you know what speed you were making when yon entered the piers?

Ans. Seven to eight miles; it is a little difficult to tell; I could only judge from the slacking of the revolutions.

Ques. Why was the vessel moved with so much speed on entering the harbor?

Ans. I could not tell you why.

Ques. Was there any other propeller trying to enter at the same time?

Ans. There was one two miles below us making for the harbor.

Ques. Do you know what speed you were making immediately before you got the order to back?

Ans. I don't think I could fix it; we were running slowly.

Ques. How did you know there was a collision?

Ans. By hearing her strike something, and a shock.

Ques. How much of a shock was there?

Ans. A slight shock, not very heavy; enough so that you could feel it.

Direct resumed:

Ques. Were the orders you received to check, stop, and back promptly obeyed when they were given?

Ans. They was.

Ques. How much time elapsed after the giving of an order and the execution of it?

Ans. About three seconds.

ELISHA LEE.

145 STEPHEN FRANCIS WELLBASKY, being duly sworn, deposes and says:

I am twenty-eight years of age; I reside in Chicago; my occupa-

tion is that of a sailor; I have been a sailor twelve years; I was on board the Alleghany in the capacity of wheelsman at the time of her collision with the Winslow in May last; I was on the port side of the Alleghany's wheel; I was on deck at the wheel about half an hour before the collision; the Alleghany was going about nine miles an hour when her engine was checked; the vessel was fifty feet outside the pier when she was checked; after she was checked, it was about a minute and a half before the engine was stopped; the propeller was about half-way down the new cut when I first saw the Winslow; the Winslow was coming down the main river; after the order was given to stop, on board the propeller, the next order was to back her; and she was backing from a minute and a half to two minutes when the collision took place, when the order was given to stop her, and immediately after the order was given to put her hard aport, which was done, and she was kept there.

Our course running in the river was west three quarters or west by south; we steered in mid-channel between the piers; we steered up the centre of the channel as near as we could; the Winslow was about opposite the foundry when I first saw her, and about the middle of the river, I should judge; the collision took place right below the opening of the cut on the north side; at the time of the collision the Winslow was heading pretty near across our bows; the tug crossed our course about forty feet ahead of us; the tug went down the new cut past our stern; the tug crossed our course about south-east; she did not continue that course, but headed down the Straight Cut, on the opposite course from us, eastly north; she changed her course out thro' the cut so quick after she crossed our bows that I could not tell what time elapsed; we were just on the stand-still at the time of the collision; our vessel could not have gone any closer to the north pier with safety; the water was to shoal; I could not tell what distance we were from the south pier; we were about mid-channel, and about the same distance from one pier as the other.

Ques. Which side of the centre of the main river was the Winslow at the time she made the turn from the main river to enter the Straight Cut, and which side of the centre of the channel was she when she made the turn?

146 Ans. North side.

Ques. How far to the northward of the centre?

Ans. Twenty or thirty feet.

Ques. How far was the place where the collision took place to the eastward of the west end of the north pier?

Ans. One hundred and twenty-five feet, or about a vessel's length.

Ques. How far south of the west end of the north pier was the Winslow when she passed the west end of the north pier?

Ans. May be she was eighty feet.

Ques. What did the tug do to avoid collision?

Ans. She blew her whistle once, and we answered it. That means to let our port sides pass each other, that would make both the vessels keep to the right; when she blew her first whistle she slacked her line down; she then blew a second whistle, but we did not answer her,

and she then went ahead with the vessel on a full head of steam. I could not tell how far off she was when she blew the second whistle; I should think all of the width of the river; I should think the Winslow was going seven or eight miles an hour at the time of the collision.

Ques. What was there to prevent the Winslow and the tug going fifty feet south of you?

Ans. Nothing, that I know of.

Ques. Is there any difficulty, if the water is deep enough, in steering a vessel in tow of a tug, and a tug fifty feet to the southward and westward of the center of the main river and coming round and running out of the Straight Cut fifty feet to the south of the center of the channel and between the piers; and if so, what?

(Objected to, as the witness not been shown to be conversant with the peculiar turn at the knuckle of the bend at the entrance of the Straight Cut from the river, or at all familiar with the harbor.)

Ans. There is no difficulty.

Ques. If the tug had not straightened up on the tow-line, and run the Winslow on to your bows, but let the Winslow have her head as she was running when the tug blew the second signal, would there have been any collision between your vessels?

Ans. No, sir.

Ques. If the tug had let go of the Winslow when the tug crossed your bows, would there have been any collision between your vessels?

147 (To both of the preceding questions the objection is made that they are inadmissible, for the reason that the Alleghany had no right, by coming down on the tug and vessel—that she had the whole length of the harbor to go back—to require such amount of exertion on the part of the tug and the vessel at a moment of peril caused by the propeller herself.)

Ans. There would; for if the tug had let go of the line, there was a strong southwest wind blowing that would have blown her right down on us.

Ques. Would the collision have taken place at the same place or further up?

Ans. The same place; it would have made no difference; the tug let go of the vessel line before she crossed our bows.

Ques. How many lines did the tug have to the Winslow?

Ans. One, that I am certain of.

Ques. From which bow of the vessel?

Ans. I could not tell.

Ques. How many men were on the tug?

Ans. I don't know; I saw one.

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Parties met.

Cross-examination:

Ques. How far up the river from the knuckle of the bend was the Winslow when you first saw her?

Ans. Opposite the foundry, in the centre of the river, coming

down; I was standing in the wheel house of the propeller, on the port side of the wheel; the captain was on the pilot house; there were three windows down in the pilot house; these windows are perhaps three feet and a half across; there are at least seven windows in the wheel house; there may be more, the wheel house is all windows; there was three feet and a half to four feet open space over the top of the windows, which had been dropped down.

Ques. You state that the propeller was fifty feet outside of the pier when she was checked down. How do you know that?

Ans. The wires to the bells in the engine room run at our backs in the wheel house, and I say she was checked because I heard the wires give the order to check. I heard them pulled three times. I did not hear the bell. I say she was fifty feet from the pier by
148 the observations I then made. The Winslow had not yet straightened up on her course to go out of the Straight Cut when the collision took place.

Ques. Was not the Winslow just in the act of coming around to straighten on her course at the knuckle of the bend at the time of the collision?

Ans. Yes, sir; and she had been coming around for a minute before. The Alleghany was drawing, when we left Chicago, eleven feet forward and about eleven feet two inches aft. I am certain that was her draft.

Ques. If the harbor piers are two hundred and sixty feet apart, and the beam of the Alleghany is twenty-four feet or thereabout, and you were coming up the centre of the Straight Cut that morning, and it's but fifty feet from the north pier on the beach line to eleven feet depth of water, what was there to prevent you going further to the starboard at that point, and thereby steering clear of the Winslow?

Ans. It was because we were drawing too much water, and we could not have got clear of the Winslow if we had gone further to the starboard.

Ques. The question gives you eleven feet of water fifty feet from the north pier; then where is the difficulty about the depth of the water, and what prevented you, according to your own statement, of passing up the Straight Cut within fifty feet of the north pier?

(Objected to, that the question assumes the case not warranted by the testimony.)

Ans. In entering shoal water, a heavy-laden vessel sinks deeper than in deep water, and her wheel goes faster, and if we had run further to the northward we would have gone on the shoal.

Ques. Do you consider that an answer to the question?

Ans. I do, sir.

Ques. What was the distance between the centre of the cut and a line within fifty feet of the north pier?

Ans. If it is 260 feet between the piers, it would be eighty feet.

Ques. How much bilge has the Alleghany?

Ans. I don't know.

Ques. If her breadth of beam is twenty-four feet, about how large would her bilge be?

Ans. I can't tell you. If I were a good ship-carpenter, I could tell you. She has a bilge, I suppose, but I can't give you the
149 size of it. I have been in her hold, have stowed goods in her, but I can't give you an idea of her bilge; I have been on her 107 days; had been on her one trip before this collision.

Ques. You have stated the space between the centre line of the cut and a line fifty feet south of the north pier was eighty feet; as Exhibit A shows the depth of water to be eleven feet on the beach line, extended fifty feet from the north pier, and you testify that with that width of water eighty feet, saying nothing about the bilge of the vessel, you could not have gone further north than you did go; now, why not?

Ans. If we had gone to the northward, the water would have shoaled; and the Alleghany when she goes in shoal water steers slow, so that we always keep her in the deepest water.

Ques. Now, witness, is that the true reason?

Ans. Yes; to the best of my knowledge.

Ques. Then in coming up the channel that morning, you clung to the centre of the channel, with eighty feet breadth of channel before you get where the water shoaled to eleven feet, without giving away, because your vessel steered better in the centre; is that what you mean to be understood to say by your last answer, or what do you mean?

Ans. Yes; that is what I mean.

Ques. How near were the Alleghany and the Winslow to each other before the order to back was given to the Alleghany?

Ans. About 200 feet.

Ques. What was there to have prevented the Alleghany backing before she got so close to the Winslow?

Ans. There was not anything; we could, for that matter, backed before we got inside at all.

Ques. You state, on page 24 of your deposition, "that the collision took place right below the opening of the cut on the north side, and that at the time of the collision the Winslow was heading pretty near across our bow;" that you were at that time steering pretty near up the centre of the channel, and the collision with the Winslow was on her port bow; will you explain to us how that possibly could be?

Ans. Going up the Straight Cut when the whistle was blown the first time on the tug, our wheel was put hard aport and kept that way till the collision took place. The tug blew a second whistle, and went ahead with the vessel with a full head of steam, and the
150 vessel having her canvas set and the tug, pulling her around into the cut, would pull her right across our bows, and nothing could prevent her coming into us, the way she was coming at that time.

Ques. You state when you first saw the Winslow she was in the middle of the river, she steering across your bows. Now, state how you got her north of the centre of the river at the time of the collision and yet struck on her port bow?

Ans. When she blew the first whistle she was leaving the centre

or had left before. She leaving the centre would bring her to the northward and swing about southeast, as I should think; and at about the west end of the north pier she pulled her across our bows, and the collision took place. We shifted our course about half to three-fourths of a point, and had run on that course near two minutes, I think, before the collision.

Did two minutes elapse between the time the order was given to port the helm and the time of the order to back the engine?

Ans. Our wheel was aport when the order was to stop her, and was aport when her engine was stopped. It was a minute and a half to two minutes after the order was given to stop her before the order was given to back her.

Ques. Do vessels usually cross the channel in making the turn there in passing out?

Ans. Not unless there is some obstruction in the way, a vessel coming in or out, or the like.

Ques. Was there anything unusual in the position of the Winslow that morning when you first saw her that made you apprehend a collision?

Ans. There was not, until the tug blew the second whistle.

Ques. What then made you apprehend a collision?

Ans. The way the tug started on the vessel at such a high rate of speed.

Ques. You stated in your testimony that the tug let go of the Winslow before she crossed your bow; now, if she let go of the Winslow before she crossed your bow, how could she draw the Winslow across your bow?

Ans. The distance was so short that she had to let go for her own safety.

151 Ques. What do you mean "by her own safety?"

Ans. I don't know as you may exactly call it her own safety. They generally let go of the line and get out of the way when they see there is going to be a collision.

Ques. Now, witness, if it's true that the Alleghany was backing at this time, how did you happen just now to use the words that "the tug had to get out of the way for her own safety;" and out of the way of what do you mean?

Ans. They always, when there is going to be a collision and they have a vessel in tow, let go and get out of the way of if they can—out of the way of a collision. I don't know that anything could have happened to the tug then.

(The witness, upon his testimony being read over to him as the commissioner has it down, said he desires to correct it and to say that when she was stopped then the order was given to port the helm and was obeyed, and the helm was put hard over.)

Ques. You say, in speaking of the Winslow, that she had a part of her canvass set; will you state what part she had set, or what you mean?

Ans. Her foresail was set, and the mainsail throated, and the

peak about half-way up. I don't know whether her staysail was set or not.

Re-direct:

The captain directed us where we should enter the channel and where we should steer; we steered her as he directed us; that is, we steered her there and steadied her in the course.

Ques. Was the wind blowing fresh enough that morning to drift the Alleghany out of her course at all in the river?

Ans. No, sir; without it was to the northward a little.

Ques. If you had gone close enough to the north pier to have dragged the bottom, did the wind blow hard enough to have blown you over so as to have struck on the bottom hard enough to have lost your control of the vessel?

(Objected to as immaterial.)

Ans. Yes, it did.

STEPHEN F. WELBASKY.

JAMES MCGIVEN:

I am 28 years of age. I reside at Chicago. I have followed the lakes a good while. I have fired on propellers and steamboats, and acted as second engineer. I was on the Alleghany at the time
152 of her collision with the Winslow. I was second engineer. I was in the engine room from the time the engine was checked until after the [the] collision. I have heard the testimony of Mr. Lee, the chief engineer, taken above, read over; his statements are as I recollect the facts, and are substantially correct. I have acted as second engineer on the Ohio in 1856.

JAMES MCGIVEN.

GEORGE BALDWIN, being duly sworn, deposes and says:

I am 44 years of age. I reside in Chicago. I am a sailor. I have been such since 1837. In the spring of 1864 I was sailing on the Alleghany between Chicago and Sarnia. I was mate of the Alleghany then. I was on board at the time of the collision with the Winslow. I was standing at the forecastle on the upper deck. I was between decks when she entered the piers. The Alleghany was about her length in between the piers when I got on the upper deck. I was perhaps twenty feet from the pilot house. I was where I could hear the bell. I heard the order given to check the vessel by the master to the engineer; also to stop her; and about two minutes after she was stopped I heard the signal to back her. When I first saw the Winslow she was opposite or below the Pierson warehouse. I think she was nearest the east side of the river. I could not see the whole of her. The Winslow was coming down towards the corner of the pier, when the order was given to stop the Alleghany. In coming up the river between the piers, we were about the middle of the river. We kept the same course right up along the middle of the stream in the Straight Cut. I heard the tug signal the propeller to go on her port side. That signal was answered by the propeller.

We commenced to back her immediately after. I do not know whether the helm was put aport or not, but I suppose it was when she was backed. I could not always hear from my position. I did not look at the Winslow all the time coming down. When she got at a point intermediate between the west end of the harbor piers, the bow of the Winslow was north of the centre of the stream, perhaps twenty feet. In coming down the river after I first saw the Winslow, before she entered the Straight Cut, she kept nearest the east and north bank of the river. As the Winslow came along, she kept sagging towards the east bank. She did not cross the
153 centre line between the piers before the collision. The Winslow was coming down pretty close to the bend when I first anticipated the collision. The propeller was near the beach line on map marked A, and the Winslow was just entering the Straight Cut. I did not anticipate the collision before the master ordered the propeller to be backed. The vessels might be two hundred feet apart when the master gave the order to back the propeller.

Ques. At the time the order was given to back the vessel, and from the time the order was given to back up to the time of the collision, was there anything that could have been done on board the propeller to avoid the collision which had not been done?

Ans. No, sir. I recollect when the tug blew her second whistle; it was when the propeller was backing.

Ques. Could there have been anything done by the tug, after it blew the second signal, to have avoided the collision which was not done; and if so, what?

Ans. If the tug had pulled the vessel's head to the westward instead of to the eastward, as he did, there would have been no collision.

Ques. Was the tug so situated that it could have done that?

(Objected to as directly leading.)

Ans. Yes, it could have done it.

Ques. Whereabout was the vessel at the time the second whistle was blown?

Ans. Pretty close to us, but still in the main river. There was nothing to prevent her going down the old channel of the river at the time she blew her second whistle, if there was water enough. There was nothing to prevent her going sixty feet south of the Alleghany, if there was water enough. I know nothing about the depth of water in the river. The Alleghany, at the time the Winslow struck her, was, I should suppose, not going a mile in three hours; she was almost stationary. The Winslow, I should say, was going six miles an hour; the Winslow was going in the neighborhood of southeast, and we were going west half south.

Cross-examined:

I am not very familiar with this port. I do not know of a vessel having run down the old channel since the Straight Cut was
154 opened. I could not very well say what time elapsed from the time the Alleghany entered the piers until the collision.

I have to attend to getting fenders down, and lines ready as we get near port, and I was not paying much attention. I saw the vessel coming down, and heard the whistle of the tug; but I was not paying much attention. I would not like to say, to a minute or two minutes, what time elapsed, as I was busy part of the time. I would not like to say any length of time.

Ques. Have you any judgment on the subject?

Ans. Yes, sir.

Ques. What is it?

Ans. Say four or five minutes.

Ques. When you first saw the Winslow, if she was north and east of the centre of the piers, as you have stated, just before entering the knuckle of the bend, and the propeller Alleghany was within two hundred feet of the knuckle of the bend, if the Alleghany kept her course, was not the collision inevitable?

Ans. Yes. sir.

Ques. Now, did you suppose that the Winslow was going to pass to the southword of you, if she was on the east and north of the centre of the river when she signaled you to pass on the port of each other without crossing your bows?

Ans. Of course, she must cross our bows.

Ques. Did you not know, as soon as she gave her first signal to pass each others' ports, that she must cross your bows?

Ans. Yes.

Ques. How could she cross your bows and keep on her course without a collision, unless you would so slow your engine, or stop it, to enable her to pass, unless you changed your course or gave way?

Ans. The boat was stopped and backing up for that purpose, of giving her a chance to pass.

Ques. Why did you not either back your engine sooner, so as to give her time to cross your bow, or head your vessel further over to the north pier?

(Objected to.)

Ans. The boat was stopped, and she was backed enough to stop her; that would naturally slue her head round to the northward.

Ques. Will you now answer the question?

155 Ans. I have answered it, as far as I know.

Ques. The only trouble about the matter, then, was that you did not back quick enough or fast enough?

Ans. The boat was backed enough to stop her headway.

Ques. How happens it that you and each of your crew testify that the boat was backed just enough to stop her headway as that collision happened, and did not you and each of you have a consultation together on that very point after the collision?

(Objected to as being double.)

Ans. No; we did not. I do not know of what anybody else testified, but we did have no such talk.

Ques. Were you not all assembled in a room in this city, together with one of your owners, your captain, and your counsel, for the best

portion of a day, in regard to the collision and your then contemplated examination?

Ans. I was never in a room in this city with either Mr. Hannah, Mr. Lay, or Captain Boynton, unless it was in the warehouse.

Ques. Who have you talked with on the subject of your knowledge as to the collision, before this, your examination?

Ques. Not any person in particular; I used to talk a little to the wheelsman about it, that is all.

Ques. Did not you and the captain have a conversation on this very subject, on the morning of the collision, when you got to your dock?

Ans. No; not a word.

Ques. You then swear distinctly that you never had any conversation with any person whomsoever, of any kind whatsoever, except with the wheelsman?

Ans. I do. If any person made a remark as to our having a collision, I would answer them and pass on.

Ques. How often have you talked with the wheelsman on the subject of this collision?

Ans. I don't know; three or four times; I can't tell exactly; I never bothered my head much about it any way.

Ques. How long a line had the tug out, towing the Winslow?

Ans. Perhaps forty feet or over. I think there were two lines. I saw one in the water. I can't tell on which bow.

How long would the Winslow, at the speed she was going,
156 have been in passing your bow if you had not come in contact?

Ans. I could not say how long; two or three minutes perhaps.

Ques. Would it be a longer period than it required her to go her own length?

Ans. Yes.

Ques. State how much longer, and why?

Ans. A minute longer, so as to get clear her booms and headgear. The tug gave a second signal. The propeller did not answer it. The vessel had got down so near the propeller, and the master was backing the propeller all he could, so that it was no use answering the signal.

Direct resumed:

Mr. Van Dyke put this question to you on cross-examination: "How could the Winslow cross your bows and keep on her course without a collision, unless you would so slow your engine, or stop it, to enable her to pass, unless you changed your course or gave way?" Could she have not crossed your bows without a collision, without your stopping or giving way, if she had kept to the starboard side of the river and out of the cut, as she signalled she would do?

(Objected to, because it is an assumption of facts contrary to the proof of the witness himself, and of the two wheelsmen that preceded him, as to the position of the Winslow when they first perceived her as she entered the piers.)

Ans. Yes; if she had kept on the starboad side, but she did not; that was the trouble.

Ques. You testified, in answer to Mr. Van Dyke's question, beginning on the 40th page, that if the Winslow was on the north and east side of the centre of the river, just before entering the knuckle of the bend, and the propeller Alleghany was within two hundred feet of the knuckle of the bend, and had kept on her course, that, in your opinion, a collision was inevitable. Did you mean to include in that statement the Alleghany's keeping on her course as she was before she had stopped or backed her engine, or afterwards?

(Objected to as improper in form.)

Ans. The Alleghany was backed up, not perfectly still, of course. If the tug had let the Winslow alone after she had blew the second signal, she would have gone past us, but instead of that he
157 put on all the steam he could use, and pulled her right on to us. If we had kept on our course without backing or stopping, we would have run into her.

Cross-examination:

Ques. Do you regard your preceding answer as an answer to the question put to you by Mr. Mariner?

Ans. Yes.

GEORGE BALDWIN.

ROBERT CRYAN, being duly sworn, deposes and says:

I an 28 years of age; I am a seaman, and have been since 1853; I was on the Alleghany at the time of the collision; I was standing aft on the vessel at the time of the collision, perhaps three quarters of an hour; just before we got to the pier, we were running from 9 to 10 knots an hour; when the engine was checked, were running about 8 knots an hour; we were distant from the end of the piers from half to three quarters of the length of the vessel; I could and did hear the signals; I was where I could hear the propeller's wheel; I heard the signal to check; the next signal was to stop her; I could not tell how long after the signal to check, it was given; the next order was to back her; she backed a minute to a minute and a half or two minutes before the collision; I saw the Winslow before the collision; she was nearly opposite the Detroit railway dock, and a little east of it; I did not observe her course down the river; when I next noticed her she was to the west of the bend; she had not opened the bend; she was then nearest the north side of the river; I did not notice her as she opened the Straight Cut; she had not opened the Straight Cut when we commenced backing; I was on the starboard side of the Alleghany, until the signal was given to back her, when I went to the port side; I think when we commenced backing, we were pretty near mid-stream; I was on the starboard side of the Alleghany when I saw the Winslow just at the Straight Cut; as near as I can recollect, I think I saw the jib-boom of the Winslow from the port side of the Alleghany; I saw the tug when she passed the side of the propeller;

I could not say how far off she was from us; I was aft at the time of the collision; I felt the shock but very little; the Alleghany was head-reaching a very little at the time of the collision; about as fast as a man could walk, if he was very lazy about it; I could not say, from where I stood, how far the Alleghany drifted back; I was on the hurricane deck; she might have drifted three hundred
158 feet; I could not tell how the Alleghany was heading after she struck; the Winslow drifted, but I do not know how far.

Cross-examination.

Ques. From the time you entered the harbor piers, how much time intervened before the collision?

Ans. I could not say.

Ques. Why could you not say?

Ans. I had no time to look at.

Ques. Was it to exceed five minutes, in your opinion?

Ans. I should think it was somewhere near that.

Ques. Where was the Alleghany, when you first saw the Winslow opposite the Detroit dock?

Ans. Nearly abreast of the outer piers; we might have been inside the piers.

Ques. Can you tell accurately how much the Alleghany was head-reaching just before?

Ans. I could not.

ROBERT CRYAN.

HENRY S. HOMAN, being duly sworn, deposes and says:

I am thirty-two years of age; I live in Secbeanaw county, Michigan; I am a farmer; I know the propeller Alleghany; I was on board of her last May, at the time of her collision with the Winslow; I came on the propeller that morning from Chicago as a passenger. At the time of the collision, I was standing on what is termed the hurricane deck of the vessel, between the cabin and the bow. I stepped out on deck sometime before we came into the river. When I first saw the Winslow, the propeller was about the entrance of the river. A short time before the collision I heard the tug whistle. The propeller whistled before I heard the tug. We were closer to the north pier than to the other, as near as I can remember. I think the propeller ran up the Straight Cut about parallel with the piers. I could not tell how long after the propeller got in the piers she worked her engine. I am not at all acquainted with the working of an engine. I could not tell whether the engine had been backing or not at time of the collision. I could not tell whether the propeller was in motion at all or not at the time of the collision. My impression is that, if either, she was backing. The collision took place in the Straight
159 Cut; I should think over an hundred feet from the river; I should think on a line with the lake shore, but I am not certain. I was standing on the right hand side of the centre of the propeller when the collision took place. The schoooner had some sails up. When I heard the tug blow the whistle, the schooner was a lit-

tle distance from the propeller ahead, and the tug rather to the left of the propeller. At the time the tug blew the whistle, the schooner was about coming out of the river; if I understand, to be about crossing a line drawn between the west ends of the pier, as delineated on map "A." At the time the schooner Winslow passed the west end of the north pier, she passed, I should think, not more than one-fourth of the river from the north pier, and she was heading on a course that would have brought her against the south pier, eighty to ninety feet out from the beach of the lake. At the time of the collision, or just before. the tug was moving about as rapidly as they usually do. I think the tug did not slacken her speed as she passed the propeller.

Ques. How far from the center line between the piers, and on which side of it, did the collision occur?

Ans. About the width of the boat north of the centre.

Ques. Did the tug continue on the course it had been running as it passed the bows of the propeller?

Ans. It seemed to me she turned down more as if she were going down alongside of the propeller. I saw some men on board the schooner. There were several more than myself on board the propeller. I don't know what the direction the wind was, but it seemed to me to be southwest. It seemed tome that the stern of the vessel was being brought down by the wind about as fast as the tug brought down the bow. The vessels were probably about two hundred feet apart when I began to apprehend a collision. The collision started me a little back. I should think the wind was blowing pretty high that morning.

Cross-examined:

I used to follow shoemaking before farming. I kept a shoe and leather store in Lyman, Ohio. I am not at all familiar with the sailing of vessels or steam crafts. The floor on which the cabin is built is the best way I can express the hurricane deck. I was
160 standing on the same deck with the cabin. I was never in the Milwaukee harbor before. That was the first day I saw Milwaukee.

Ques. If the course of a vessel was down the river when she passed the west end of the north pier, about one quarter distant from the north pier, and heading on the south pier to a point 80 or 90 feet east of the line of the beach, how could the point of collision be where you have placed it; about the width of the propeller north of the centre of the Straight Cut, and a little west of the line of the beach?

Ans. When the tug reached the centre of the piers, or about there, she changed her course, and straightened her course to go out of the river, and that, with the wind, brought the vessel to the place where the collision took place.

Ques. How was the vessel Winslow heading at the time of the collision?

Ans. She was neither straight across or straight down. She was

diagonally across the channel, and she would have struck the south pier before she got out of the river if she had kept that course. I came on deck about the time the propeller was leaving the lake. I remarked when I came up that the propeller was nearer to the right hand as she was coming in. I was standing a little in front of the cabin and on the right hand of the centre of the boat coming in.

Ques. How much to the right of the centre of the boat were you standing?

Ans. I can't tell you; I simply noticed that I was so standing; I can't tell how near the bow I was standing; I was looking at this tug and vessel, and at the city.

Ques. From the time you came out on the deck, when the propeller was entering the Straight Cut, what were you observing particularly, and what were you doing, and how far had the propeller got into the Straight Cut before your attention was attracted by the vessel?

Ans. I came out to look around and see what was to be seen. I was standing there, looking. The propeller had got up about a third of the length of the pier when I first saw the vessel, but I do not pretend that this distance is correct.

Ques. What attracted your attention to the Winslow?

161 Ans. I saw she was coming in our direction.

Ques. When did you first notice that the propeller Alleghany, in coming up the Straight Cut, kept north of the centre, and what now impresses that fact upon your memory?

Ans. I noticed the fact; that is all the reason I can give. It seems that I can see the whole thing now. I did not notice the other side so much, but remember of looking in that direction.

Ques. Who have you talked with about this collision since the collision?

Ans. I could not tell you now; a great many spoke to me about it.

Ques. Did any one come to you to Michigan specially to see you about it?

Ans. No; not that I know of.

Ques. Who asked you to come here as a witness?

Ans. Mr. Harmon.

Ques. When and where did he ask you?

Ans. I don't remember when. He asked me in Traverse City.

Ques. Who, in the interest of the boat, first spoke to you about the collision?

Ans. Mr. Harmon was the only one that I know of in the interest of the boat that first talked to me about it. That was in Traverse City, sometime in the summer. I came to Chicago by propeller, and from Chicago here by rail.

Ques. By what propeller did you come to Chicago?

Ans. The Alleghany.

Ques. How are you to return to Michigan?

Ans. I expect to return on the same propeller.

Ques. Who was captain of the propeller on your last trip to Chicago?

Ans. He was mate at the time of the collision. His given name is George. His surname I don't know.

Ques. Did you have any conversation with him as to the collision?

Ans. I can't remember.

Ques. Will you swear you had not any?

Ans. I can't remember whether I had any or not.

Ques. Have you ever had any conversation with the present or former captain of the propeller as to the collision?

162 Ans. Captain Boynton asked my name at the time of the collision, and I think the present captain asked if I was going over as a witness.

Ques. You state you heard the propeller whistle before the tug; what kind of a whistle was it?

Ans. It was a whistle; that is all I can tell about it; I can't imitate it.

Ques. Was it one or more whistles?

Ans. I think it was only one whistle.

Ques. What did the propeller do beside whistle?

Ans. I don't think she went so fast afterwards, but I was not paying much attention.

Ques. Did she change her course after whistling?

Ans. I could not say; I did not notice whether she was changing her course or did change after that whistle.

Ques. Did she change her course at all after entering the piers that morning, or did she not? If she did, state in what particular.

Ans. I don't think she did; from the time she entered the piers I think she kept straight on, parallel between the piers.

Ques. After the propeller entered the Straight Cut, when did she first commence slowly, or lessening her speed?

Ans. About the time she whistled, I think.

Ques. How far was she then from the Winslow when she whistled?

Ans. I can't tell.

Ques. About how far?

Ans. She was up into the Straight Cut a little ways; about one-fourth of the length of the piers in; not more than that, I should think.

Ques. Where was the Winslow?

Ans. She had not entered the Straight Cut.

Ques. Did you not swear in your examination in chief that when the propeller first whistled, the vessels were not over 200 feet apart?

Ans. I don't remember but I think I did. I may not thoroughly understand the question. I think that is the answer to it, if I do.

Ques. How soon after the propeller whistled did you hear the tug whistle?

Ans. Some time elapsed, but I could not tell how soon.

Ques. Can you now tell us how far the vessels were apart
163 when the propeller first whistled?

Ans. In my judgment, they might have been two hundred feet apart; but I can't tell.

Ques. How soon after the propeller whistled did you apprehend a collision?

Ans. It was not very long.

Ques. Was the propeller in motion when you first heard the tug whistle?

Ans. She might have been moving, but the propeller and tug were not very far apart.

Ques. How far did the stem of the propeller enter the Winslow?

Ans. I did not notice.

Ques. Did it enter the Winslow at all?

Ans. Yes.

Ques. If the stem of propeller made a clear cut into her middle, thro' two or three timbers and beams, without any raking or tearing aft, cutting also thro' her planking, how could she do it if not in motion?

Ans. I don't know. I don't know whether it could be done.

Ques. Will you state now what makes you think the Alleghany was not in motion?

Ans. I did not feel the Alleghany move.

Ques. What object or objects were you looking at just before the collision?

Ans. I was assisting the ladies and children to get out of the way so soon as I saw there was to be a collision.

Ques. Have you any other reason to give for the Alleghany's not being in motion, other than that you did not feel her move?

Ans. I have not; I did not look at anything or make any observation to ascertain whether she was in motion or not.

Direct resumed:

Ques. When the propeller first whistled, whereabout was the Winslow?

Ans. I think about opposite figure 66 on Exhibit D.

Ques. Were not the propeller and Winslow forty rods apart when the propeller whistled?

Ans. I think they were.

164 Cross-examination:

Ques. What now makes you judge that the vessels were forty rods apart when the propeller whistled?

Ans. I find the pier was longer than I thought it was when I made the statement.

Ques. How do you find the pier is longer than you thought it was?

Ans. By Mr. Mariner's statement.

Ques. Do you know, or can you state with any accuracy, where the Winslow was when the propeller first whistled?

Ans. I could not to a certainty.

Ques. Can you state with any certainty where the propeller was when she first whistled?

Ans. Not more than the other; only that she was about a fourth of the way in from the east end of the pier.

Ques. What was the color of the Winslow?

Ans. Black.

Ques. Are you certain the Winslow was black at that time?

Ans. She looked so any way.

H. S. HOMAN.

HEZEKIAH CLARKE, being first duly sworn, deposes and says:

I am 42 years of age. I reside in Michigan, Leelenaw county. I am a farmer. I was on board of the Alleghany at the time of her collision with the Winslow in May last. I was a passenger. I was on deck that morning when the vessel entered the Straight Cut. I was on deck probably half an hour before the Alleghany entered the Straight Cut. I heard the Alleghany whistle as she entered the Straight Cut that morning. I could not tell how far in she was when she whistled. I did not notice whether she ran parallel with the piers or not; to give a rough guess, I should think about a hundred feet from the entrance of the piers. I should think the collision took place at the point "A" on Exhibit D, but I can't tell. A very short time before the collision, and some few minutes, I was standing on the stem of the propeller, and my woman, who was with me, asked me why the propeller stopped. I then cast my eyes toward the pier and I could see, by objects thereon, that the propeller was backing.

I can't say that I heard the tug whistle at all. I was closer
165 to the right hand of the centre of the deck. The tug and the vessel appeared to be coming down the river on pretty good headway. The tug, after passing the bow of the propeller, swung round by the side of us. I noticed, as the tug went past us, her speed was increased considerably. Her engine worked faster, in my judgment. From the noise she made, I should say so.

Cross-examination:

Ques. You have answered that when the tug passed the Alleghany that she worked her engine faster. Will you tell us what part of the engine she worked faster?

Ans. All I can say, is that the tug made more noise, and, so far as I could see with my eyes, the tug was moving faster.

Ques. How far was the tug ahead of the vessel?

Ans. I could not give you any kind of satisfactory answer.

Ques. What shore were you looking at just before the collision?

(Objected to.)

Ans. The north shore or pier.

Ques. Was there land or water directly north of you from where you stood?

Ans. I understand there was the pier.

Ques. What was on the other side of the pier north of you, land or water?

Ans. My eyes were on the pier. I did not notice what was ahead or beyond.

Ques. Will you answer the question put to you or not?

Ans. I shall answer you anything I know anything about.

Ques. Can you swear whether there was land or water on the other side of the pier, north of it?

Ans. I did not.

Ques. If you can't state whether there was land or water on the other side of the pier, directly north of where you stood, will you state how you fixed the point "A" as the point where the collision took place?

Ans. I could tell from the small objects that were on the pier, and where my eyes were fixed, whereabouts the collision took place.

Ques. What objects on the pier were they that you saw, and do you see them on the map?

166 Ans. Little small lumps that I saw, and that I took particular notice of. I do not see them on the map.

Ques. If you don't see these small points on the map, why do you fix point A as the point of collision?

Ans. That is as near as I can tell you.

Ques. Was the collision nearest the east end or west end of the piers?

Ans. I could not give you any satisfaction on that. I think it took place nearest the west.

Ques. How much nearer the east or west end?

Ans. I did not observe the length of the piers.

Ques. Was it nearest the north or south end of the piers?

Ans. If I was to judge, it was nearest to the north side.

Ques. What makes you judge it was nearest to the north?

Ans. So far as I could judge from my eyes.

Ques. Are you willing to swear, as a matter of fact, that that collision did not take place at the centre of the Straight Cut?

Ans. To the best of my knowledge, I don't think it did.

Ques. Is that the only answer you will make to that question?

Ans. That is as far as I can.

Ques. Are you as certain that the collision took place at point A as that the propeller backed before the collision?

Ans. Yes, I think that I am.

Ques. On which side of the Winslow did the Alleghany hit the Winslow?

Ans. I was almost lost; I cannot tell which way things were; I'll tell you this about it, it hit on the side next the propeller; you can take which side you like.

Ques. Which side was that?

Ans. I can give no correct answer.

Ques. Did the Alleghany change her course coming up the Straight Cut?

Ans. I could not tell.

Ques. Was it not after the collision that you noticed these objects on the pier, and that the propeller was backing?

Ans. It was before the collision.

Ques. What man on board that boat besides yourself no-
167 ticed that propeller backing before the collision?

Ans. I don't know any one but myself.

Q. Did you ever hear any one say that she backed before the collision?

Ans. No; the only one that I heard say anything about it was my woman, who said the vessel was stopped.

Ques. How far was the Alleghany from the Winslow when you noticed this backing?

Ans. Somewhere from sixty to one hundred feet.

Ques. How many minutes, or about how many minutes, was the propeller backing when the collision took place?

Ans. It must have been four, five, or six minutes, or thereabouts; but I can't tell.

Ques. Did the Alleghany make any motion in backing.

Ans. Not a great deal, but some motion.

Ques. What kind of motion?

Ans. I don't know; it was motion.

Ques. Who in the interest of the Alleghany have you talked about with in this case?

Ans. No one talked with me, that I know of.

Ques. Did you ever talk with Mr. Hannah?

Ans. Not that I know of.

Ques. Who spoke to you about being a witness?

Ans. Mr. Homan spoke to me about Mr. Hannah wanting me as a witness.

Ques. Were you sitting or standing on the deck?

Ans. I was standing.

Ques. From where you were standing, on the right side of the propeller, just before the collision, observing the objects on the north pier, how could you tell what speed the tug was making after she passed your bow?

Ans. I could see her by casting my eye toward her as she passed our bow, and noticed that the tug, as she turned the corner, increased her speed considerably.

Ques. Is your hearing good, or are you somewhat deaf?

Ans. When I am not very well and have caught cold, I am a little deaf.

168 Ques. How was your hearing at the time of the collision?

Ans. I was all right; it was good.

Ques. When you were looking at the objects at the north pier, and supposed the propeller was backing, did you observe whether the water between the propeller and the pier was running out or in?

Ans. My eyes were on the pier; I did not notice whether it was or not.

HEZEKIAH CLARK.

HENRY STILES, being duly sworn, deposes and says:

I am twenty-one years of age last September; I am a farmer; I was a passenger on board of the Alleghany at the time of her collision with the Winslow in May last; I was on deck at the time; I was standing between the cabin and the stem of the boat, a little to the right-hand side; I can't tell how long I had been on deck before the collision, perhaps twenty minutes or half an hour; the course of the Alleghany was westwards as she entered the piers, and nearly parallel with the piers; I heard the tug whistle once; I heard the Alleghany whistle; she whistled before I heard the tug; the Alleghany and tug were pretty close together when I heard the tug whistle; the engine of the Alleghany was reversing before the collision; I can't tell how long before the collision the engine was reversed, but should judge a minute or two; the wheel of the engine was turning backwards after the engine was reversed; I know it by the motion of the water; I noticed the water along side the boat and coming toward the bow of the boat; I heard the captain give the signal to the engine room to reverse, being two taps on the bell; I heard the signal.

Ques. How did it happen that you noticed the motion of the water?

Ans. Because I heard the signal, and I looked at the water to see that the wheel was reversing.

Ques. Did her engine work rapidly after it was reversed?

Ans. I think it worked pretty rapidly, but I did not take particular notice whether it was or not. The collision took place in the Straight Cut.

Ques. At the time of the collision, was the Alleghany in motion; and if so, which way?

Ans. I think at the time of the collision she was almost at a dead stop; but if she moved at all, it was backward.

169 Ques. Whereabout in the Straight Cut did the collision take place?

Ans. We stood somewhere near the line of the beach; that was where the collision took place.

Ques. Which side of the centre of the Straight Cut was the Alleghany at the time of the collision?

Ans. The north side; a little over on the north side of the centre, between the piers.

Ques. Whereabouts were you in the Straight Cut when you first saw the Winslow?

Ans. I can't tell exactly; she was just in the mouth of the Straight Cut.

Ques. Whereabouts was the Winslow?

Ans. She was above the bend.

Ques. Did you see the Winslow as she came into the Straight Cut?

Ans. Yes.

Ques. How near did she pass to the west end of the north pier?

Ans. I don't know exactly, but she passed pretty close to the west end of the north pier.

Ques. What proportion of the width of the river was she from the north pier, should you think?

Ans. As near as I could guess she was one-fourth of the way.

Ques. As she came down the Straight Cut towards your vessel, and up to the time of the collision, was the stern of the Winslow to the right of you?

Ans. She was to the right of us.

Ques. How far? What angle with your course did she come?

Ans. I cannot tell what proportion of her, unless it was three-fourths of her, to the right of us.

Ques. At what angle did the Winslow cross the course of the Alleghany?

Ans. I can't tell the number of degrees.—(The witness places a couple of books at an angle on the desk, and states that the angle is about the same as the angle made by the courses of the two vessels; and the counsel agree that the angle made by the books is about 125 degrees.)—The Winslow had one sail nearly up at the time of the collision. After the tug crossed the bow of the Alleghany,
170 she changed her course and came right down alongside the Alleghany. I think the engine of the tug worked faster after she changed her course. I judge from the motion of the water and the speed she appeared to make.

Cross-examined:

I have been a farmer pretty much all my life. I am not familiar with the working of engines. I know nothing of the management of sail and steam crafts. I have crossed the lake several times, but never worked as a sailor.

Ques. In passing the north pier in entering the Straight Cut, as you have stated in your examination in chief, how was the Winslow then heading?

Ans. I can't give exactly the course, but if she had kept on that course she would have struck the south pier 80 or 90 feet east from the beach of the lake.

Ques. You speak of a tug's changing her course just before the collision; was that change anything more than heading her up from the south pier towards the lake?

Ans. No; I guess not.

Ques. If the tug had not straightened up in the Straight Cut, where would she have struck?

Ans. If she had kept on the course she was, she would have struck the south pier.

Ques. Had the tug straightened up in the Straight Cut before the Alleghany and Winslow struck?

Ans. She was straightening up.

Ques. At what point of the Straight Cut did the Winslow and Alleghany come together?

Ans. The point where the vessels came together was about twenty to twenty-five feet west of the beach line, and about twenty feet north of the centre of the Straight Cut.

Ques. What sail had the Winslow partly up?

Ans. I think it was the sail on the foremast, after it.

Ques. How high was the deck of the Alleghany from the water from where you stood?

Ans. I will say, at a rough guess, fifteen feet.

171 Ques. How close to the tug was the Alleghany after she straightened up?

Ans. I can't tell exactly how close she was, probably six or eight feet.

Ques. If you stood on the forward deck of the Alleghany, on the right-hand side, between the cabin and the stem, and the tug passed the Alleghany, and when she straightened up was but six or eight feet from the Alleghany, how could you see the water between the Alleghany and the tug?

Ans. I don't know that I saw the water between, but I saw the water behind, and thus I judged how far it was between the tug and the Alleghany.

Ques. If you could not see the water at that time, why do you say that you judge from the motion of the water that the tug, after she straightened up, increased her speed?

Ans. I saw the motion of the water before she reached the Alleghany when she first changed her course.

Ques. What motion in the water do you allude to; explain?

Ans. I suppose that the water would not circulate so fast if the wheel went slow as if it went fast, and I saw that the circulation of the water was increased at the wheel of the tug.

Ques. Was not that motion of the water at the stern of the tug the motion she necessarily made in turning and straightening up, changing her course and position in the water?

Ans. I don't know what it was for, whether on account of the turning or not.

Ques. How far was the Winslow behind the tug?

Ans. I should judge it was probably thirty feet.

Ques. Can you state whether or not, as the tug swung round to straighten up in the Straight Cut, the tow-lines slacked or not between the Winslow before the collision?

Ans. I did not notice it slacken any.

Ques. Were you observing it at the time?

Ans. I don't know as I was observing the line at all; I don't know that I noticed the line at all.

Ques. About how far from the south pier was the Alleghany in coming in the Straight Cut?

172 Ans. As near as I can judge, she was near the centre; closer the north pier, if any difference.

Ques. Did she change her course at all, from that time up to the collision, or did she run up the Straight Cut parallel with the piers?

Ans. I think she run parallel between the piers, or nearly so; if any difference, nearer to the north pier; that is my judgment.

Ques. What makes you think, and can you state positively, that the collision was not twenty feet south of the centre of the Straight Cut?

Ans. I can only give my judgment; when I saw that a collision was going to take place, I looked across to the south pier to see if there was room for them to pass, and made observations also on the north pier, and saw that we were a little nearer the north pier.

Ques. Will you mark on the map with small letter "*b*" the point where the collision was?

Ans. It is marked, the lower end of the tail "*b*" being the point.

Ques. You state that you judge from the motion of the water, and the taps on the bell of the Alleghany before the collision, that the wheel of the Alleghany was reversed. How far, or about how far, was the Alleghany from the Winslow at this time?

(Objected to as double and indefinite.)

Ans. I should judge it was over a hundred, or somewhere there. I can't say.

Ques. How long was it after you heard the taps on the bell to reverse, before you noticed the motion in the water?

Ans. Two or three seconds. I heard the taps and looked over the side of the vessel and saw the water.

Ques. Was the Alleghany moving ahead before the engine was reversed?

Ans. Yes.

Ques. Was that the first time that the engine was backed after you entered the Straight Cut?

Ans. The first time that I noticed anything about it.

Ques. Did you ever come into the harbor piers at this port before that morning?

Ans. Yes.

Ques. When, and how often?

173 Ans. I can't exactly say when. I have been twice before this; once a year ago last June, and last spring.

Ques. Have you been in since the collision?

Ans. No.

HENRY G. STITES.

A. M. HOMAN, being duly sworn, deposes and says:

I am 42 years of age; I am a farmer; I was a passenger on the Alleghany at the time of her collision with the Winslow in May last; I was on the upper deck at the time, near the bow; I had been on probably half an hour before the collision. The course of the Alleghany that morning, as compared with the piers, was about parallel; the collision took place at the dot in the letter "D," about on a line with the beach of the lake, and nearest the north pier; I first saw the Winslow coming out of the river and entering the Straight Cut; I heard the tug whistle; I think it whistled just as it entered the bend into the Straight Cut, but I am not sure, but I know that it did just before the collision; I heard the propeller whistle; it appears to me that the tug whistled just on making the turn, and then the propeller whistled; the Alleghany was moving slowly, just before the collision, up the Straight Cut towards the city; I do not know that the engine of the propeller had been reversed; the Alleghany was

moving very slowly, almost stopped, before the collision; after the Alleghany whistled, she lessened her speed considerably, so that she was almost at a dead stop.

Ques. What did you do immediately before the collision?

Ans. I attended to getting my children back to the cabin, and had done that and turned round just as the collision took place. I think the Winslow had some of her sails up, but I am not certain. I think I noticed one sail partially up. It appeared to me that the tug was taking the Winslow down at the usual speed. I don't know how that is. I should judge it might be six or seven miles an hour. I don't know about that, however. I think three-fourths of the Winslow was to the right of the Alleghany just before the collision. I think I noticed that the tug, as she passed the Alleghany, increased her speed, on account of the more frequent escape of steam, and the increased action of the water behind the tug. The Alleghany was coming up the Straight Cut parallel with the north pier, the Winslow coming in out of the river, heading toward the south pier, the Win-
174 slow being then just at the entrance of the Straight Cut from the river, the tug straightening up and the wind being strong. Just after the bows of the Winslow got a little past the bows of the Alleghany, she was brought right on to the bows of the Alleghany. The wind was blowing pretty fresh from the southwest at the time.

[Go to page 148, cross-examination.]

Direct interrogatories of claimant.

First. What is your name, age, and occupation; where do you reside?

Second. Were you a passenger on board the propeller Alleghany at the time of her collision with the schooner Winslow, in the port of Milwaukee, on the 6th of May, 1864.

Third. Whereabout on the propeller were you? If on deck, state how long you had been on deck, and whereabout on deck were you. How long had you been there?

Fourth. Did you hear the Alleghany whistle as she came up between the harbor piers that morning?

Fifth. Did the collision occur in the river or between the harbor piers?

Sixth. If you have answered that it occurred between the piers, state how far it occurred from the west end of the piers.

Seventh. Which side of the centre line between the piers was the propeller at the time of the collision?

Eighth. Was the propeller in motion at the time of the collision; and if so, which way was she moving, forward or backward?

Ninth. How far forward of the propeller did the tug cross the bows of the propeller, and in what direction was she going?

Tenth. Did the tug change her course after she crossed the propeller's bows; and if so, what change did she make?

Eleventh. Did the tug increase her speed as she crossed the bows of the propeller, or directly afterward; and if so, how much?

Twelfth. Which way was the schooner Winslow heading at the time of the collision?

Thirteenth. As you were standing on the deck of the propeller looking ahead, was the Winslow to your right or left hand?

Fourteenth. Do you know or can you state any other matter
175 or thing which would be to the benefit or advantage of either party? If so, state the same as fully and particularly as if particularly interrogated thereto.

E. MARINER,
Proctor for Claimants.

Cross-interrogatories.

First cross-interrogatory. If, in answer to the second interrogatory, you answer that you was a passenger on board of the propeller Alleghany at the time of the collision, state whether you were ever in the port of Milwaukee before; if yea, how often; in whose company were you travelling at the time of the collision; where did you get on board of the Alleghany; and where did you leave her?

Second cross-interrogatory. If you make answer to the seventh interrogatory, state how wide the piers are and where you got the information as to their width.

Third cross-interrogatory. If, in answer to the eighth interrogatory, you state which way the propeller was moving at the time of the collision, state how you know the fact. What do you know about the movement of propellers? What were you looking at at the time the propeller was so moving?

Fourth cross-intorrogatory. If, in answer to the tenth interrogatory, you state that the tug changed her course after she crossed the propeller's bows, state what the tug's course was before, and what her course was after, she crossed the propeller's bows.

Fifth cross-interrogatory. If, in answer to the eleventh interrogatory, you state that the tug increased her speed, state how you know the fact. What did the tug do to increase her speed?

Sixth cross-interrogatory. If you make answer to the thirteenth interrogatory, will you state the course of the propeller at the time; what part of the deck of the propeller you occupied; in what direction you were looking at the time?

Seventh cross-interrogatory. What knowledge have you about the management of steam craft? Where and how did you get your knowledge on that subject?

Eighth cross interrogatory. With whom have you talked about the collision in question, and when; do you know the parties
176 to the suit, or any of them, and which of them?

Ninth cross-interrogatory. Do you know or can you state any other matter or thing which would be to the benefit of or advantage to the libelant? If so, state what, fully and at large.

EMMONS & VAN DYKE,
Proctors for Libelant.

Cross-examination:

Ques. From the speed at which the tug was towing the Winslow and the position of the Alleghany, as you have stated it, in coming up the Straight Cut, if the Alleghany, had held back one minute sooner, would not the Winslow have passed free?

Ans. I don't think she hardly would.

Ques. How many minutes sooner?

Ans. I can't tell. The Winslow was going rather sideways toward the Alleghany, and the tug turning down, together with the wind, increased that side direction of the Winslow toward the Alleghany. I made up my mind a few minutes before, from the fact as to how the tug was going and the wind, together with the position of the Alleghany.

Ques. If the Alleghany would have thrown her head round towards the north pier, as the wind was driving the Winslow, would they not have come together side and side?

Ans. I think not. I think the vessel would have been struck near the stern. I am a brother of Henry S. Homan and cousin of Hezekiah Clark, the two previous witnesses. We all came together from Michigan in the Alleghany.

A. M. HOMAN.

LYDIA A. GARDNER, a witness produced, sworn, and examined, on the part and behalf of the claimants, to the first interrogatory deposes and says:

My name is Lydia Gardner. I am twenty-five years old; am keeping house for my brother, and reside in the township of Traverse, in the county of Grand Traverse, and State of Michigan.

To the second interrogatory said witness deposes and says:

I was a passenger on board of the propeller Alleghany on
177 the 6th day of May, 1864, at the time of her collision with the schooner Winslow in the port of Milwaukee.

To the third interrogatory said witness deposes and says:

I was on the deck of the Alleghany, standing on a pile of rope coiled in front of the capstan; I had been sitting there, I should think, about an hour before the collision took place.

To the fourth interrogatory said witness deposes and says:

Yes; I heard the Alleghany whistle as she came up between the piers that morning.

To the fifth interrogatory said witness deposes and says:

The collision occurred between the harbor piers.

To the sixth interrogatory said witness deposes and says:

The collision occurred about the length of the Alleghany from the west end of the pier, as near as I can judge of the distance; by the west end of the pier, I mean that end toward which the Alleghany was heading; I do not know the point of compass in Milwaukee.

To the seventh interrogatory said witness deposes and says:

At the time of the collision the Alleghany was on the right-hand side, as we go into port, of the centre line between the two piers.

To the eighth interrogatory said witness deposes and says:

The propeller Alleghany was in motion, and moving backward at the time of the collision.

To the ninth interrogatory said witness deposes and says:

The tug crossed the bow of the propeller at a distance of about once the width of the propeller, going from right to left.

To the tenth interrogatory said witness deposes and says:

As soon as the tug had fairly passed the bow of the Alleghany, she changed her course and went straight down between the piers.

To the eleventh interrogatory said witness deposes and says:

As the tug crossed the bows of the Alleghany the tug put on steam and increased her speed considerably, but can't say how much.

To the twelfth interrogatory said witness deposes and says:

I cannot tell the point of compass the Winslow was going; if the piers run east and west, then the Winslow was going about south-east.

To the thirteenth interrogatory said witness deposes and says:

As I stood on the deck of the Alleghany looking forward,
178 the Winslow was on my right hand.

To the fourteenth and last interrogatory said witness deposes and says:

I know of nothing more that would be of benefit or advantage to either party in this suit.

Cross-examination;

To the first cross-interrogatory, to said stipulation attached, said Lydia Gardner, a witness produced, sworn, and examined on the part and behalf of the claimants, deposes and says:

I was never in the port of Milwaukee before; I was traveling in company with my brother, Geo. B. Gardner, Mr. Clark, Samuel Homan, Alexander Homan, Henry Homan, Mrs. Sarah Homan, Mrs. Mary Homan, Martha Homan, Mrs. Styles, Mrs. Clark, and Mr. Howard and his wife; I got on board of the Alleghany at the city of Chicago, Ill., and left her at Traverse City, Grand Traverse county, Michigan.

To the second cross-interrogatory said witness deposes and says:

I cannot state how wide the piers are.

To the third cross-interrogatory said witness deposes and says:

I knew that the propeller was moving backward, from feeling the motion backward after stopping our forward motion; I know nothing

about the science of managing propellers; at the time, I was watching the other vessel.

To the fourth cross-interrogatory said witness deposes and says:

Before the tug crossed the bow of the propeller, her course was about southeast, provided the piers are east and west; and after she crossed the bow, she changed her course to the east, or down the pier.

To the fifth cross-interrogatory said witness deposes and says:

I know the fact that the tug increased her speed, first, because I saw her accelerate her motion; second, because I heard her exhaust steam much more rapidly than she was exhausting a moment before, and I judged from the noise that she let on more steam.

To the sixth cross-interrogatory said witness deposes and says:

The Alleghany was headed up the piers, toward Milwaukee, and lying parallel with the piers; I was on the deck of the propeller in front of the capstan on the bow, and was looking at the tug and Winslow.

To the seventh cross-interrogatory said witness deposes and says:

I know nothing of the management of steam craft; only what I have observed while living near the harbor of Chicago, Ill., in
179 seeing the tugs and other steam crafts plying up and down the harbor, and stopping, starting, and so forth.

To the ninth and last cross-interrogatory said witness deposes and says:

I can state nothing more that would be of benefit or advantage to either libellants, of my own knowledge.

L. GARDNER.

SARAH CLARK, a witness produced, sworn, and examined, on the part and behalf of the claimant in the above suit, to the first interrogatory deposes and says:

My name is Sarah Clark; I am the wife of Hezekiah Clark; am twenty-nine years old; am a housekeeper; reside in the township of Glen Arbor, Leleman county, Michigan.

To the second interrogatory said witness deposes and says:

I was a passenger on the propeller Alleghany on the 6th day of May, A. D. 1864, at the [the] time of her collision with the Winslow in the port of Milwaukee.

To the third interrogatory said witness deposes and says:

I was on the deck of the propeller, on the bow, in front of the capstan; had been on deck about half an hour when the collision took place.

To the fourth interrogatory the said witness deposes and says:

I heard the Alleghany whistle as she was coming up between the harbor piers that morning.

To the fifth interrogatory said witness deposes and says:

The collision occurred between the piers.

To the sixth interrogatory said witness deposes and says:

I can't tell exactly how far it was; it was quite a little piece from the west end of the piers, as much as the length of the boat, I should think; by the west end of the piers, I mean the end to the city of Milwaukee; I don't know the point of compass there.

To the seventh interrogatory said witness deposes and says:

The propeller, at the time of the collision, was on the right-hand or north side of the centre line between the two piers.

To the eighth interrogatory said witness deposes and says:

The propeller was in motion at the time of the collision; she was moving backward.

180 To the ninth interrogatory said witness deposes and says:

I can't state exactly how far it was forward of the Alleghany that the tug crossed her bows, but I should think it was about two rods.

To the tenth interrogatory the said witness deposes and says:

Just as the tug crossed the bow of the Alleghany, the tug turned and run along side of the Alleghany; when the tug turned, she turned to the left.

To the eleventh interrogatory said witness deposes and says:

The tug increased her speed as she crossed the bows of the Alleghany right smart; that is, she put on right smart of steam.

To the twelfth interrogatory said witness deposes and says:

Supposing the piers to run east and west, and the east end of the piers to be toward the lake, the schooner Winslow was heading about southeast at the time the collision took place.

To the thirteenth intrrrogatory said witness deposes and says:

The Winslow was more to the right than to the left.

To the fourteenth and last interrogatory said witness deposes and says:

I know of no other matter or thing that would be of benefit or advantage to either of the parties to this suit.

To the first cross-interrogatory, to said stipulation attached, said Sarah Clark, a witness produced and examined on the part and behalf of the claimant, deposes and says:

I was never in the port of Milwaukee before; at the time of the collision I was travelling in company with my husband, Mr. Gardner, Miss Gardner, Samuel Homan, Alexander Homan, Henry Homan, Mr. Stiles, Mrs. Sarah Homan, Mrs. Mary Homan, Miss Martha Ho-

man, and Miss Sarah Homan; I got on board of the 'Alleghany at Chicago, Ill., and left her at Traverse City, Grand Traverse co., Michigan.

To the second cross-interrogatory said witness deposes and says:

I cannot state how wide the piers are.

To the third cross-interrogatory said witness deposes and says:

I know that the propeller was moving backwards, for I looked at the north pier; there were some lumps or something on the north pier, that is, the pier on the right-hand side, and I saw from them that we were moving backwards; I asked my husband what
181 we were stopping for, and he said we were rather backing, if I would look at the pier I would see that we were backing; I looked at the pier and saw that we were going back.

To the fourth cross-interrogatory said witness deposes and says:

As I stated in my direct examination, I am not acquainted with the points of compass in Milwaukee; if the propeller was headed west, the tug, before she crossed the bow of the propeller, was running about southeast, and after she crossed the Alleghany's bow she turned east and ran close beside the propeller.

To the fifth cross-interrogatory said witness deposes and says:

The tug made more noise, and the steam puffed faster, and she appeared to go through the water faster; I don't know what they do to increase the speed of a tug.

To the sixth cross-interrogatory said witness deposes and says:

I cannot tell, only relatively; if the piers are located east and west, and the west end is toward Milwaukee, then the Alleghany was headed to the west; I stood on the forward part of the cabin deck, in front of and near the captain at the instant the boats came together; I was looking at the north pier.

To the seventh cross-interrogatory said witness deposes and says:

I have no knowledge of the management of steam craft; this was my first trip on board a steamboat.

To the eighth cross-interrogatory said witness deposes and says:

I have never talked much about it to or with any one. Mr. Perry Hannah came to me and asked me to state to him what I knew about the collision, and I stated to him in substance what I have stated here on this examination; after I had made the statement to him, he told me he would want me for a witness; I am not acquainted with any of the parties except Mr. Perry Hannah.

To the ninth and last cross-interrogatory said witness deposes and says:

I know of no other matter or thing that would be of benefit
182 or advantage to the libellant.

(Signed) S. CLARK.

Sworn to and subscribed before me this 3d day of February, A. D. 1865.

J. G. RAMSDELL,
United States Court Commissioner
for the Western District of Michigan.

MARTHA ANN HOMAN, a witness produced, sworn, and examined, on the part and behalf of the claimant in the above-entitled suit, and on the interrogatories and cross-interrogatories hereto attached, to the first interrogatory deposes and says:

My name is Martha Ann Homan; I am sixteen years old; I am keeping house for my father and brother; I reside in the township of Glen Arbor, Leelenaw county, Michigan.

To the second interrogatory said witness deposes and says:

I was a passenger on board of the propeller Alleghany at the time she collided with the schooner Winslow in the port of Milwaukee on the 6th day of May, A. D. 1864.

To the third interrogatory said witness deposes and says:

I was on the deck of the propeller, sitting on the ropes in the bow; had been there about an hour.

To the fourth interrogatory said witness deposes and says:

I heard the Alleghany whistle as she came in between the harbor piers that morning.

To the fifth interrogatory said witness deposes and says:

The collision occurred between the harbor piers.

To the sixth interrogatory said witness deposes and says:

I can't tell how far it was from the west end of the piers; it was much nearest the west end than the east; when I say the east end of pier, I mean the end toward the lake.

To the seventh interrogatory said witness deposes and says:

At the time of the collision the propeller was nearest to the right-hand pier.

To the eighth interrogatory said witness deposes and says:

The propeller was moving backward at the time of the collision.

183 To the ninth interrogatory said witness deposes and says:

I cannot tell the distance that the tug was from the propeller when she crossed the propeller's bow; she was pretty close; the tug was going southeast when she went past the bow of the Alleghany.

To the tenth interrogatory said witness deposes and says:

The tug swung inside of the Alleghany immediately after she crossed her bow.

To the eleventh interrogatory said witness deposes and says:

I notice that the tug made more noise just as she crossed the bow of the propeller than she had been making before, but cannot tell whether she increased her speed or not.

To the twelfth interrogatory said witness deposes and says:

At the time the collision took place the schooner Winslow was headed to the southeast, or about in that direction, that is, if the Alleghany was headed west; I don't know the point of compass in Milwaukee.

To the thirteenth interrogatory said witness deposes and says:

As I stood on deck looking ahead, the Winslow was on my right hand.

To the fourteenth and last interrogatory said witness deposes and says:

I know of no other matter or thing that can be of benefit or advantage to either party to this suit.

To the first cross-interrogatory, to the said stipulation attached, said Martha Ann Homan, a witness produced, sworn, and examined on the part of the claimant, deposes and says:

I was never in the port of Milwaukee before; I was travelling in company with my father and brother and sister, and with Lydia Gardner, and Mr. Gardner, Mr. Stiles, and Mr. and Mrs. Clark; I took passage on board the Alleghany at Chicago, Ill., and left her at Traverse City, in Grand Traverse county, in the State of Michigan.

To the second cross-interrogatory said witness deposes and says:

I cannot tell how wide the piers are.

To the third cross-interrogatory said witness deposes and says:

I know that the propeller was moving backward at the time of the collision, from the fact that just before it struck I was thrown
184 forward; I am not acquainted with the manner in which propellers are governed or moved; at the time, I was looking at the schooner Winslow.

To the fourth cross-interrogatory said witness deposes and says:

The tug was running about southeast; after she crossed the bow of the propeller she turned to the east; that is, straight down between the piers towards the lake.

To the fifth cross-interrogatory said witness deposes and says:

The tug made more noise just as she passed the bow of the Alleghany than she had been making before; I don't know as she run any faster.

To the sixth cross-interrogatory said witness deposes and says:

The Alleghany was headed up the piers towards Milwaukee; I

was on the cabin deck at the bow of the propeller; I was looking towards the tug, and schooner Winslow.

To the seventh cross-interrogatory said witness deposes and says:

I am entirely unacquainted with the management of steam craft.

To the eighth cross-interrogatory the said witness deposes and says:

I have talked with Mr. Perry Hannah about the collission; [I have talked with Mr. Perry Hannah about the collision;] that is, Mr. Perry Hannah, sometime in the forepart of the winter, came to our house to inquire about what we knew about the collision; there were a number present who were passengers on board the Alleghany at the time of the collision, and the conversation was general; Mr. Hannah asked several questions as to where we were and what we saw at the time of the collision, and we answered his question; that, I believe, is all the conversation we have had upon the subject that I now remember; I am acquainted with Mr. Hannah.

To the ninth and last cross-interrogatory said witness deposes:

I know of no other matter or thing that would be of benefit or advantage to the libellant.

(Signed) MARTHA A. HOMAN.

Sworn to and subscribed before me this 8th day of February, A. D. 1865.

J. G. RAMSDELL,
United States Commissioner for the Western District of Michigan.

185 Miss LYDIA GARDNER recalled, and to the eighth cross-interrogatory deposes and says:

I have talked with Mr. Perry Hannah about the collision; sometime in the fore part of the winter, Mr. Hannah came to me and asked me to state what I knew about the collision in question, and I made a statement to him, in substance the same that I have made on my examination to-day; I have had no other conversation with Mr. Hannah, or any one, in relation to the collision, that I now remember of; I know none of the parties except Mr. Hannah; I have seen him a few times.

(Signed) L. GARDNER.

Sworn to and subscribed before me this 3d day of February, A. D. 1865.

J. G. RAMSDELL,
United States Commissioner for the Western District of Michigan.

Adjourned to February 4th, at 8 a. m.

SATURDAY, *February 4th*, 1865.

Examination of witness resumed at the examiner's office.

CLARA HAGER, a witness, produced, sworn, and examined on the part of the claimants, under the stipulation and on the interroga-

tories hereto attached, on her oath deposes and says, in answer to the first interrogatory:

My name is Clara Hager; I am sixteen years old; am boarding with my brother; I reside in the township of Whitewater, Grand Traverse county, Michigan.

To the second interrogatory said witness deposes and says:

I was a passenger on board of the propeller Alleghany at the time of her collision with the schooner Winslow in the port of Milwaukee, A. D. 1864, on the 6th day of May.

To the third interrogatory said witness deposes and says:

I was on the cabin deck of the propeller, at the bow, sitting on a pile of rope, with Miss Gardner and Miss Martha Homan, until just as the collision took place I rose up before the boats struck;
186 I had been sitting there about an hour when the collision took place.

To the fourth interrogatory said witness deposes and says:

I heard the Alleghany whistle as she came up between the harbor piers that morning.

To the fifth interrogatory said witness deposes and says:

The collision occurred between the harbor piers.

To the sixth interrogatory said witness deposes and says:

I should judge it was about the length of the propeller from the west end of the piers that the collision took place; that is, about the length of the propeller from the end of the piers toward Milwaukee; I do not know the point of compass there.

To the seventh interrogatory the witness deposes and says:

The propeller was on the north or right-hand side, as you go in, of a centre line between the two piers; that is, she was nearest to the right-hand pier.

To the eighth interrogatory said witness deposes and says:

The propeller was moving backward at the time of the collision.

To the ninth interrogatory said witness deposes and says:

When the tug crossed the bow of the Alleghany, she was, as near as I can judge, about the width of the Alleghany from the Alleghany's bow, and was going about southeast if the harbor piers are east and west.

To the tenth interrogatory said witness deposes and says:

The tug changed her course as soon as she got past the bow of the Alleghany, and turned right down the harbor, close by the side of the Alleghany, and parallel with her.

To the eleventh interrogatory said witness deposes and says:

I can't tell whether she increased her speed or not; she made

more noise and puffed a great deal faster just as she got past the Alleghany's bow and turned her course than she did immediately before.

To the twelfth interrogatory said witness deposes and says:

The schooner Winslow was heading, at the time of the collision, in the same direction that the tug was heading when she crossed the bow of the propeller, and before she turned.

To the thirteenth interrogatory said witness deposes and says:

187 As I stood on the deck of the Alleghany at the time of the collision, the schooner was most by the right hand.

To the fourteenth and last interrogatory said witness deposes and says:

I know of no other matter or thing that would be of benefit or advantage to either party.

To the first cross-interrogatory, to said stipulation attached, said Clara Hager, a witness produced, sworn, and examined on the part of the claimant, deposes and says:

I have been in the port of Milwaukee once before, when I was about ten years old. At the time of the collision in question, I was traveling in company with my brother and father, Miss Gardner, the two Misses Homan, Mr. and Mrs. Clark, and some others. I got on board of the Alleghany at Chicago, and left her at Traverse City, Grand Traverse county, Michigan.

To the second cross-interrogatory said witness deposes and says:

I cannot state how wide the piers are.

To the third cross-interrogatory said witness deposes and says:

I judge that the propeller was moving backwards from the fact that I was thrown forward before the collision took place. I was looking at the Winslow and tug at the time. I know nothing about the mode of moving or managing propellers.

To the fourth cross-interrogatory said witness deposes and says:

I am not acquainted with the point of compass at Milwaukee. If the harbor piers run east and west and the west end is towards the city, the tug, when she crossed the bow of the Alleghany, was going southeast, or about in that direction, and just as she passed she turned and came right along side of the Alleghany.

To the fifth cross-interrogatory said witness deposes and says:

I do not know that the speed of the tug was increased; I only know that she puffed faster and made more noise just after she got past the bow of the propeller than she did before.

To the sixth cross-interrogatory said witness deposes and says:

188 The Alleghany was headed straight up between the piers. I was on the cabin deck of the propeller, in front of the

capstan, clear up in the bow, by the ropes, at the time of the collision, and was looking towards the other vessels.

To the seventh cross-interrogatory said witness deposes and says:

I have no practical knowledge of the management of steam craft.

To the eighth cross-interrogatory said witness deposes and says:

I have talked with no one about the collision since the day it happened except Mr. Perry Hannah, that I now remember of. Sometime in the forepart of the winter Mr. Hannah came down to our house, and asked me if I was out on deck at the time of the collision, and saw what was going on; I told him I was on deck and saw the collision; I don't recollect now that he asked me any more questions. I told him what I remembered seeing, and he told me that he should want me for a witness. I am acquainted with none of the parties except Mr. Hannah, and I never recollect of speaking to him until he came down to our house at that time.

To the ninth and last cross-interrogatory said witness deposes and says:

I know of no other matter or thing that can be of any benefit or advantage to the libellant.

(Signed) CLARA HAGER.

Sworn and subscribed before me this 4th day of February, A. D. 1865. J. G. RAMSDELL.

United States Commissioner for the Western District of Michigan.

Miss SARAH HOMAN, a witness produced, sworn, and examined on the part of the claimant, under the stipulation and on the interrogatories hereto attached, in answer to the first interrogatory, on her oath, deposes and says:

My name is Sarah Homan; I am seventeen years old; I am keeping house for my father and brother; I reside in the township of Glen Arbor, Leelanaw county, Michigan.

To the second interrogatory said witness deposes and say:

I was a passenger on board the propeller Alleghany at the time of her collision with the schooner Winslow, on the 6th day of May, 189 A. D. 1864.

To the third interrogatory said witness deposes and says:

I was on the cabin deck of the propeller, standing in the bow of the boat, close by Martha Homan, Mrs. Hager, and Miss Gardner; I had been there about an hour before the collision took place.

To the fourth interrogatory said witness deposes and says:

I heard the Alleghany whistle as she came up between the piers that morning.

To the fifth interrogatory said witness deposes and says:

The collision occurred between the piers.

To the sixth interrogatory said witness deposes and says :

I can't tell what distance from the west end of the piers the collision took place.

To the seventh interrogatory the said witness deposes and says:

The propeller was at the right-hand side of a centre line between the two piers, as we were headed.

To the eighth interrogatory the said witness deposes and says :

The propeller was in motion and moving backwards at the time of the collision.

To the ninth interrogatory said witness deposes and says :

I can't tell the distance the tug was from the propeller when she crossed her bow ; she was pretty close ; she was going about southeast; that is, if the harbor piers run east and west and the east end is toward the lake, the tug was running southeasterly.

To the tenth interrogatory said witness deposes and says :

The tug, as soon as she crossed the bow of the propeller, turned to the left and came right along side of the propeller.

To the eleventh interrogatory said witness deposes and says :

Directly after the tug crossed the bow of the Alleghany she made more noise and puffed harder than before ; don't know whether she run any faster or not.

To the twelfth interrogatory said witness deposes and says :

I can't tell the point of compass that the Winslow was agoing when the collision occurred ; she was headed the same way the tug was when she crossed the bow of the Alleghany.

To the thirteenth interrogatory said witness deposes and says :

190 Standing on the deck of the propeller looking about, the Winslow was at my right hand.

To the fourteenth and last interrogatory said witness deposes and says :

I know of no other matter or thing that would be of benefit or advantage to either party to this suit.

To the first cross-interrogatory, to the said stipulation attached, said Sarah Homan, a witness, produced, sworn, and examined on the part of the claimant, deposes and says :

I was never in the port of Milwaukee before.

To the second cross-interrogatory said witness deposes and says:

I cannot tell how wide the piers are.

To the third cross-interrogatory said witness deposes and says :

I judge that the propeller was moving backward at the time of the

collision from feeling a backward motion, and being suddenly started forward just before the collision occurred ; I was looking at the other vessels ; I know nothing about the management of propellers or the manner in which they are moved or governed.

To the fourth cross-interrogatory said witness deposes and says :

When the tug crossed the bow of the propeller, she was running southeast, as I said in my direct examination; and immediately after she got past, she changed her course and went down the harbor towards the lake or east, and came close along side of the propeller.

To the fifth cross-interrogatory said witness deposes and says :

I don't know that the tug increased her motion after she crossed the bow of the propeller ; she made more noise and puffed faster and harder.

To the sixth cross-interrogatory said witness deposes and says :

The propeller was headed straight up between the piers at the time of the collision, I was on the cabin deck of the propeller at the bow ; I was looking at the sail vessel at the time the collision occurred; by said vessel, I mean the schooner Winslow.

To the seventh cross-interrogatory said witness deposes and says :

191 I know nothing at all about the management of steam craft.

To the eighth cross-interrogatory said witness deposes and says:

I have never talked with any one about the collision since the day it happened, until yesterday, at the hotel; Mr. Hannah asked me what I knew about it, and I stated to him in substance what I have stated here; I don't remember of having talked with any one else about it, or with him at any other time; I am not acquainted with any of the parties except Mr. Hannah, and never spoke to him until yesterday.

To the ninth and last cross-interrogatory said witness deposes and says:

I know of no other matter or thing that would be to the benefit or advantage to the libellant.

(Signed) SARAH HOMAN.

Sworn and subscribed before me this 4th day of February, A. D. 1865.

J. G. RAMSDELL,
U. S. Ct. Com. for the Western District of Michigan.

Mr. FRANCIS HOWARD, a witness produced, sworn, and examined, on the part and behalf of the claimants, under the stipulation and on the interrogatories hereto attached, on his oath, deposes and says;

To the first interrogatory said witness deposes and says:

My name is Francis Howard; I am thirty-three years of age; I re-

side in the township of Traverse, in the county of Grand Traverse, and State of Michigan; have resided in Grand Traverse county about four years.

To the second interrogatory said witness deposes and says:

I was a passenger on board the propeller Alleghany at the time of her collision with the schooner Winslow in the port of Milwaukee, on the 6th day of May, 1864.

To the third interrogatory said witness deposes and says:

I was on the cabin deck of the propeller, just forward of the captain's room, on the right-hand side, leaning against the rail. I had been on the deck about twenty minutes before the collision took place, and in that spot perhaps about ten minutes.

To the fourth interrogatory said witness deposes and says:

192 I heard the Alleghany whistle as she came up between the harbor piers that morning.

To the fifth interrogatory said witness deposes and says:

The collision took place between the piers.

To the sixth interrogatory said witness deposes and says:

I should think it was about two hundred feet from the west end of piers that the collision occurred.

To the seventh interrogatory said witness deposes and says:

The propeller was on the north side of a center line between the two piers when the collision took place.

To the eighth interrogatory said witness deposes and says:

The propeller was in motion at the time of the collision; she was backing.

To the ninth interrogatory said witness deposes and says:

I should judge that the tug crossed the bow of the propeller about twenty feet ahead of her; the tug was going about southeast when she crossed the bow of the propeller.

To the tenth interrogatory said witness deposes and says:

After the tug crossed the bow of the propeller, she changed her course to about due east down the harbor.

To the eleventh interrogatory said witness deposes and says:

The tug increased her speed just as she crossed the bow of the propeller; I noticed she escaped steam a great deal faster and made more noise, but did not notice whether she went through the water any faster or not.

To the twelfth interrogatory said witness deposes and says:

The Winslow at the time of the collision was headed about southeast.

To the thirteenth interrogatory said witness deposes and says:

As I stood upon the deck of the Alleghany, the Winslow was at my right hand.

To the fourteenth interrogatory said witness deposes and says:

I know of no other matter or thing that would be of benefit or advantage to either of the parties to this suit.

193 To the first cross-interrogatory, to the said stipulations attached, the said Francis Howard, a witness produced, sworn, and examined on the part of the claimants, on his oath, deposes and says:

I have been in the port of Milwaukee two or three times before; at the time of the collision in question, I was travelling in company with my wife, a Mr. Clark and his wife, and several other passengers; I took passage at Chicago and got off at Traverse City, Michigan.

To the second cross-interrogatory said witness deposes and says:

I can't state how wide the piers are apart.

To the third cross-interrogatory said witness deposes and says:

I noticed the signal bell for backing, and the change of the wheel, and also the motion backward; I was looking at the water; I know the signals from the captain to the engineer; they are three to check, two to back, and one to start ahead or to stop.

To the fourth cross-interrogatory said witness deposes and says:

The tug, when she crossed the bows of the propeller, was running about southeast; and after she changed her course she was running about east.

To the fifth cross-interrogatory said witness deposes and says:

I know the fact that the tug increased her speed, because she escaped her steam a great deal faster; she let on more steam and worked her engine faster to increase her speed.

To the sixth cross-interrogatory said witness deposes and says:

The propeller was headed about west, or straight up between the piers; I was on the bow on the right-hand side, forward of the captain's room; I was looking towards the Winslow most of the time, except when I looked at the water to see if we were backing.

To the seventh cross-interrogatory said witness deposes and says:

I have been a hand in different capacities four seasons on steam crafts plying on the Misssissippi river and its tributaries, and as deck hand two seasons on propellers on the lakes.

To the eighth cross-interrogatory said witness deposes and says:

I have never talked much with any one; I talked with Mr. Perry Hannah the next morning after we arrived at Traverse City; but I think there was nothing said about the collision, only
194 that Hannah would want me as a witness in this suit; since

that time I have had no conversation with him or any one else on the subject, that I remember of; I met Mr. Hannah to-day, and he requested me to come before the commissioner and have my testimony taken; I am acquainted with two of the parties, Mr. Perry Hannah and A. T. Lay; I am not acquainted with any of the rest of the parties.

To the ninth and last cross-interrogatory said witness deposes and says:

I know of no other matter or thing that would be of benefit or advantage to the libellant.

(Signed) FRANCIS HOWARD.

Sworn to and subscribed before me this 4th day of February. A. D. 1864.

J. G. RAMSDELL,
United States Court Commissioner
for the Western District of Michigan.

Mrs. MARGARET WOODWARD, a witness produced, sworn, and examined, on the part of the claimants, under the stipulation and on the interrogatories and cross-interrogatories attached, on her oath, deposes as follows:

To the first interrogatory said witness deposes and says:

My name is Margaret Woodward; I am twenty-four years old; am a housekeeper; and reside in the township of Glen Arbor, Leelenaw county, Michigan.

To the second interrogatory said witness deposes and says:

I was a passenger on board of the propeller Alleghany at the time of her collision with the schooner Winslow in the port of Milwaukee, on the 6th of May, 1864.

To the third interrogatory said witness deposes and says:

I was on the cabin deck, on the right-hand side, near the [the] door of the captain's room, at the time of the collision; just previous to the collision I was sitting on the ropes in the bow; I had been sitting there about an hour.

To the fourth interrogatory said witness deposes and says:

I heard the Alleghany whistle as she came up between the harbor piers that morning.

195 To the fifth interrogatory said witness deposes and says:

The collision occurred between the harbor piers.

To the sixth interrogatory said witness deposes and says:

I should think it was between one and two hundred feet from the west end of the piers that the collision took place.

To the seventh interrogatory said witness deposes and says:

The propeller was nearest the right hand side of the harbor when the collision took place.

To the eighth interrogotary said witness deposes and says:

The propeller was in motion, moving backwards, and her bow was swinging to the right.

To the ninth interrogatory said witness deposes and says:

I can't tell how far it was from the Alleghany to the tug when the tug crossed the bow of the propeller; the tug was going southeast when she crossed the bow of the propeller.

To the tenth cross-interrogatory said witness deposes and says:

I can't tell whether the tug changed her course or not after she crossed the bow of the Alleghany; from my position I could not see.

To the eleventh interrogatory said witness deposes and says:

The tug increased her speed just before she got past the Alleghany.

To the twelfth interrogatory said witness deposes and says:

The schooner Winslow was headed southeast at the time of the collision.

To the thirteenth interrogatory said witness deposes and says:

As I stood on the deck of the Alleghany looking forward, the Winslow was a little to the right.

To the fourteenth and last interrogatory said witness says:

I know of no other matter or thing which would be of benefit or advantage to either party.

To the first cross-interrogatory, to the said stipulation attached, said Margaret Woodward, a witness produced, sworn, and ex-
196 amined, on the part of the claimants, deposes and says:

I was never in the port of Milwaukee before; at the time of the collision I was traveling in company with Mr. and Miss Gardner, Mr. and Mrs. Clark, the Homans, and several others; I got aboard of the Alleghany at Chicago, Ill., and landed at Traverse City, Michigan.

To the second cross-interrogatory said witness deposes and says:

I don't know how wide the piers are.

To the third cross-interrogatory said witness deposes and says:

I know she was running back and swinging round, by the motion of the boat, as I was looking at a little building on the north pier, and back of us, and I remarked at the time that I guessed we were going back there to land.

To the fourth cross-interrogatory said witness deposes and says:

I can't state whether the tug changed her course or not after she crossed the Alleghany's bow.

To the fifth cross-interrogatory said witness deposes and says:

I heard her put on steam and puff faster and louder just as she was passing the bow of the Alleghany.

To the sixth cross-interrogatory said witness deposes and says:

The propeller was headed a little north of west at the time of the collision; I was on the cabin deck near the captain's door on the right-hand side; just before the collision took place I was looking at the north pier, but at the time of the collision I was looking at the schooner Winslow.

To the seventh cross-interrogatory said witness deposes and says:

I know nothing of the management of steam craft.

To the eighth cross-interrogatory said witness deposes and says:

I have had no conversation with any one since the day it happened but Mr. Perry Hannah; Mr. Hannah came to me sometime in the forepart of the winter and wanted me to state what I knew about the collision, and I stated to him in substance what I have stated here to-day; Mr. Hannah then said he should call on me for a witness in the case; I am acquaintrd with none of the parties except Mr. Perry Hannah.

To the ninth and last cross-interrogatory said witness deposes and says:

197 I know of no other matter or thing that would be of benefit or advantage to the libellant.

(Signed) MARGARET WOODWARD.

Sworn and subscribed before me this 4th day of February, A. D. 1865.

J. G. RAMSDELL,
U. S. Cir. Ct. Com. for the Western District of Michigan.

C. H. BOYNTON sworn:

First interrogatory. What is your name, age, occupation, and place of residence?

Ans. My name is C. H. Boynton; my age is fifty-four; my occupation is sailor; have been sailing forty years; I have been sailing in all capacities from before the mast to master; I was sailing on the propeller Alleghany in May, 1864, as master; I had been on her for five seasons; I was in her at the time of her collision with the Winslow in the port of Milwaukee. We were running between Chicago and Sarnia, Canada; I was on deck, on the pilot house, at the time of the collision; I had been there five minutes before we got to the piers; can't tell the exact time; I was looking after the boat, telling the man at the wheel how to steer.

Second interrogatory. Will you now state what transpired from the time you went on the pilot house to the time of the collision?

Ans. I got within half or two-thirds of the length of the vessel to the pier, and then checked her down; soon after we passed the pier, length and a half of the vessel, I heard the tug signal us with one whistle; I answered that whistle with one whistle; I saw the Winslow across a neck of land between the lake and the river; I could see the spars but not the hull; I stopped our boat, meaning the engine, thinking it was a vessel coming down in tow of a tug, so that the Alleghany could lose her way enough so that I could stop her with the engine before she got up to the knuckle or end of the pier, to give the vessel a chance to get around the bend before we undertook to make a turn. After I stopped the engine, she run a length and a half further. I begun to back her. The Winslow then came down across our bows and ran into us, I take it. We were standing still, as near as I can judge. As we approached the piers, within two or three times the length of the vessel to it, I presume we were running seven miles an hour, perhaps eight. I presume we at first checked her down two-thirds. I believe the engineer always checks close when the signal is given. We were heading about west when we approached the pier. I entered about mid-
way between the piers. We kept up midway between the
198 pier. She sheered a little to the southward as we entered the piers; afterwards I straightened her up and we went up midway between the piers. We were just inside of the end of the pier when we first heard the Winslow's signal. We were drawing eleven feet two inches of water on the even keel. When the tug first signaled she was up between blocks 167 and 65. The tug with the vessel in tow came down near the centre of the river. I presume she was towing between four and five miles an hour. I should think the point of the collision was about seventy feet east from the west end of the pier, as near as I could judge. I know I had not got so far in as to see up along the face of the dock. When the tug gave the second signal I should think she was within two hundred and twenty-five feet of us. We were going west and parallel with the piers. I should think the tug was heading at that time south, southeast. The vessel was in the wake of the tug, heading the same way. The tug and the vessel were at that time about mid-channel. As soon as the tug lopped by us, she straightened up parallel with the piers. The tug, from the time I first saw her till she crossed our bows, she slacked up her lines till they flapped in the water. She got within two hundred and twenty-five feet of us; she blew one whistle and straightened up on her lines. I should think she was working with all the force she could. I should think the tug had out about forty feet of line, enough to be clear of the vessel's jib-boom. The vessel was making sail as she came down; she had her foresail up, and here mainsail part way; I did not see any man at the wheel of the Winslow; I don't know whether there was a man there or not; there was nothing between me and the wheel of the Winslow, without it was the mainsail; I was not looking at her wheel; I was watching the tug and vessel; the wind that morning was about southwest, blowing about an eight or nine knot breeze, a

good strong breeze; the reason I did not go nearer the north pier was that I was told it was shoally along there; a captain of a Milwaukee tug told me so, and told me to keep about the centre of the river if we were drawing about eleven feet of water; (Mr. Van Dyke objects to the last answer as inadmissable;) my vessel did not touch at all before the collision, that I know of; my vessel did not
199 answer the port helm, and I supposed it was on account of the shoal water; at the time of the collision the stern of the Winslow was on my right, as I stood on the pilot house; if the tug had kept right on in the course she was going when she blew the second whistle, the collision would not have happened; from our port bow to the pier at the time of the collision was about one hundred and sixteen feet; we were as near the centre of the piers as I could judge; my vessel, as I was then loaded, if I had not checked her at all, I think, would check down to six miles an hour before she got to the knuckle of the pier; I never run a tug; there was no difficulty of the master of the tug going to the south of us, when he blew his whistle the second time, if he had seen us then for the first time. I should think the wind that morning had the tendency to drift the Winslow over to the eastward; the stern of the Winslow from the north pier, I could not state the distance; the stern of the Winslow at the time of the collision was about eighty feet south of the point "A" in the dock on map "B;" she was heading southeast, perhaps a little to the eastward; we struck the Winslow just about her port cat-head; I did not feel any jar on our vessel when we come together; I could see through between our jackstaff and forward of the Winslow's foremast. My vessel sheered just as we entered the piers; we had not got by the light-house; my vessel did not answer her port helm from the time we got in two-thirds the length the pier till she stopped; the Alleghany steers well except in shoal water, she goes straight then, but don't answer her helm quick; we were backing before the second signal; we backed a full stroke, all we could work.

Third interrogatory. If at the time you rolled your wheel over to the southward, and the vessel did not answer it, the master of the tug saw you roll it over, and that the vessel did not answer it, what was there to prevent the master of the tug from stopping the Winslow before she got down to the place of the collision?

(Question objected to by Mr. Van Dyke, because the question is hypothetical and in conflict with the direct and positive evidence as to the knowledge of the captain of the tug.

Ans. I could not say whether a man could stop the vessel or not; he could have tried.

Fourth interrogatory. If the water was deep enough, was there anything to prevent him from going to the northward of you if he chose to?

200 (Question objected to by Mr. Van Dyke, as inadmissable and contrary to the rule of port and the signals given.)

Ans. If there was plenty of water, I don't know what there was to prevent him from going to the northward of us.

Cross-examination by Mr. Van Dyke:

First cross-interrogatory. You state that at the time of the collision the stern of the Winslow was about eighty feet south of letter "A" in the pier line, and that she was heading about southeast; will you now give us the direction of the piers, and state also whether the Winslow had straightened up between the piers at the time of the collision?

Ans. The piers, I believe, run east and west; the Winslow had not straightened up parallel with the piers at the time of the collision.

Second cross-interrogatory. When the tug signaled you one whistle, what did that indicate to you?

Ans. It indicated to me to keep the starboard side.

Third cross-interrogatory. Where was the propeller at the time the first signal was given and replied to?

Ans. About half or two-thirds of her length inside of the light.

Fourth cross-interrogatory. How was she with reference to the centre between the piers?

Ans. She was about the centre of the piers.

Fifth cross-interrogatory. Do you know the length of the Winslow?

Ans. I only know from hearsay; I should think she was about one hundred and forty-five feet long.

Sixth cross-interrogatory. If, when the tug first signaled you, you were about the centre of the channel between the piers, and at the time of the collision the stern of the Winslow was eighty feet south of the letter "A" on the dock line, her length being one hundred and forty-five feet or thereabouts, and heading about southeast, and the stem of your propeller came in contact with her at or about her port cat-head, the piers being two hundred and sixty feet wide or thereabouts, how much do you think you went to the starboard from the time you heard the first signal to the time of the collision?

Ans. I don't think we went any to the starboard until the time of the collision, when we were swinging a little to the starboard.

Seventh cross-interrogatory. What did your reply signal signify, that you would go to the starboard or not?

201 Ans. Yes, sir; I answered one whistle, that I understood him. It is an assent when I reply that way.

Eighth cross-interrogatory. After this signal was given and replied to, why did you keep the centre between the piers instead of going to the starboard?

Ans. Because I was told it was shoal toward the north pier, and that if I was drawing eleven feet of water to keep the centre of the river.

Ninth cross-interrogatory. If you supposed it was too shoal for you to go north of the centre of the piers, why did you signal to the tug that you would go to the starboard?

Ans. I supposed if he had half of the river, there was plenty of room for him to pass.

Tenth cross-interrogatory. Will you give me the least space that the stern of the Winslow was from the letter "A" at the time of the

collision? I want the least distance you have any idea it could have been.

Ans. It might have been twenty-five or thirty feet; I could not tell.

Eleventh cross-interrogatory. If the stern of the Winslow was even thirty feet from the north pier, heading southeast, her length one hundred and forty-five feet, and you struck her on the port cathead, how far would that make the stem of your vessel from the south pier, the piers running east and west?

(The question objected to by proctor for respondents, because there is not data enough given from which to make a calculation.)

Ans. One hundred and seventy feet, I suppose; I mean from the north pier.

Twelfth cross-interrogatory. How do you make it one hundred and seventy feet.

Ans. I make it one hundred and seventy-five feet from the north pier and eighty-five from the south pier.

Thirteenth cross-interrogatory. If the stem of your vessel at the time of the collision was one hundred and seventy-five feet from the north pier and eighty-five feet from the south pier, would that make you north or south from the centre between the piers?

Ans. It would make me south.

Fourteenth cross-interrogatory. You state that you stopped your engine so as to give the vessel time to straighten up in coming
202 in from the river to the Straight Cut. Why didn't you hold up your propeller until she had straightened up?

Ans. Because I intended to stop my vessel before I got to the knuckle of the pier, until the vessel got straightened up; for the reason that we cannot make the turn from the pier into the river without stopping and backing up; when we are loaded, we have to back up and get her going astern a little, so as to stop her headway, and then we put the helm hard to port and go ahead on her strong to get her around.

Fifteenth cross-interrogatory. Now, I want you to state at what point you commenced to back so as to make that turn.

Ans. About the third of the way over toward the west, the whole width being about five hundred feet.

Sixteenth cross-interrogatory. With your vessel drawing eleven feet and two inches of water, how much water would she require to answer her helm going slow?

Ans. Twelve feet, without there was a bank on one side.

Seventeenth cross-interrogatory. If, as a matter of fact, there was fourteen feet of water within sixty feet of the north pier, and a hundred feet from the west end of the pier, what was there to prevent you from going within sixty feet of the north pier?

Ans. Nothing, if I knew there was that much water there.

Eighteenth cross-interrogatory. Will you state how far you were from the tug when you commenced backing?

Ans. I could not tell; I should think we were backing a full minute and a half before the collision.

Nineteenth cross-interrogatory. Will you give me as near as you can, in feet, the distance you were from the tug at the time you commenced backing?

Ans. I could not tell anywheres near; we were a good ways apart.

Twentieth cross-interrogatory. How was the tug heading when she whistled the second time?

Ans. I think she was heading south-southeast.

Twenty-first cross-interrogatory. If she had kept that course, where would she have brought up—the piers running east and west?

Ans. She would have brought up against the piers.

Twenty-second cross-interrogatory You state after the tug blew her second whistle that she straightened up between the piers
203 and started up rapidly; what effect would that have on the course of the vessel, providing you had not been in the way; and would not the movement of the vessel have been naturally as rapid as the movement of the tug?

Ans. I don't think she would have swung as fast as the tug; it would swing the vessel in the same direction, but not as fast as the tug.

Twenty-third cross-interrogatory. How long was the tug in making the swing?

Ans. I can't tell; I think it was less than half a minute.

Twenty-fourth cross-interregatory. Now, captain, if you had held up your propeller a half a minute, while the tug and vessel were making the swing and straightening up in the Straight Cut, would the collision have happened?

(Question objected to by proctor for respondents, as it assumes a fact contrary to the proof.)

Ans. I don't know that we were going ahead enough to be in his road much.

Twenty-fifth cross-interrogatory. You state you were on the pilot house; where was your look-out?

Ans. I considered I was the look-out, and the mate was also standing forward at his post.

Twenty-sixth cross-interrogatory. What else was the mate doing besides looking out?

Ans. I don't know, sir, that he was doing anything else.

Twenty-seventh cross-interrogatory. Who stationed the mate forward?

Ans. He was there of his own accord; it is his duty to be there in going into port.

Twenty-eighth cross-interrogatory. What are his duties in that station in going into port?

Ans. To see that the lines are clear, and to stand by to throw a line on the dock, and to give any other commands that are necessary.

Twenty-ninth cross-interrogatory. Was he attending to those duties on board that morning?

Ans. Yes, sir.

Re-examination by proctors for respondents:

1st interrogatory. In determining how far the vessel's bow would be from the south pier, if you had her length given and the
204 distance of her stem from the north pier, wouldn't it be important to know the angle with which she laid with the piers?

Ans. I should think it would.

Second interrogatory. Now, if the vessel was one hundred and forty-five feet long and her stern lay thirty feet from the north pier, wouldn't she have to lay right straight across to reach down within eighty-five feet of the south pier?

Ans. I think she would.

Third interrogatory. If she lay at an angle of thirty-five degrees with the north pier, and her stern thirty feet distant, how far would her head be from the south pier?

Ans. One hundred and fifty-seven and a half feet.

Third interrogatory. How far is her cat-head from her stem?

Ans. Perhaps six or eight feet.

Fourth interrogatory. What was the second mate of the Alleghany doing at the time of the collision?

Ans. He was aft, getting the lines clear.

Fifth interrogatory. What are his duties going into port?

Ans. To see that his stem lines are clear, and see that the fenders are down.

Sixth interrogatory. Has he not any duties to perform in communicating the condition of the vessel aft to the captain?

Ans. He has, if anything goes wrong aft; anything getting foul of us.

Seventh interrogatory. Is it his business to see if anything is getting foul of you?

Ans. It is the duty of the second mate to see that everything is safe aft.

Re-cross-examination by Mr. Van Dyke:

First cross-interrogatory. Would not the distance of the bows of the Winslow was from the south pier at the time of the collision, she heading southeast, depend how far her stern was from the north pier, her length being ascertained as well as the course and width of the piers?

Ans. I should think so.

Second cross-interrogatory. You have stated in answer to a hypothetical question put to you, as to the distance of the bow of
205 the Winslow from the south pier, and fixed it at one hundred and fifty-seven and a half feet, assuming her stern to be thirty feet from the north pier, are you satisfied with the correctness of that answer; and, if not, what would you have to do in order to determine its accuracy?

Ans. I should a little rather see the angles tested.

Re-direct examination by proctor for respondents:

First interrogatory. What is the build of the Alleghany?

Ans. She is sharp forward and aft, and flat midships.

Second interrogatory. Did the timbers of the Winslow, when you run into her, appear sound or rotten?

Ans. They appeared rotten.

Third interrogatory. What would have been the effect of the collision on the Winslow if you had been running four or five miles an hour at the time of the collision?

Ans. We would have gone into her a great deal further than we did, and would have damaged here much more than we did.

Re-cross-examination by Mr. Van Dyke:

Interrogatory. What observations did you make as to the condition of the Winslow?

Ans. I only saw some pieces of plank drop out into the water that looked rotten.

Interrogatory. What examination did you make of the plank?

Ans. I only saw them floating on the water, while I was standing on the pilot house.

C. H. BOYNTON.

JOHN A. CRAWFORD sworn:

First interrogatory. What is your name, age, and occupation, and place of residence?

Ans. My name is John A. Crawford; I am a tug man; my place of residence is Chicago; I am about thirty-four years old.

Second interrogatory. How long have you been a tug man?

Ans. About twelve years.

Third interrogatory. In what capacity?

Ans. Everything aboard of a steamboat except fireman, engineer, or cook.

206 Fourth interrogatory. Whereabout have you been engaged in the tug business?

Ans. On the Hudson river, between New York and Troy, and in the Chicago river and Lake Michigan.

Fifth interrogatory. With the ordinary class of tugs that are used on the ports of the lakes?

(Objected to by the proctor for the libelant, not being pertinent to the question at issue.)

Ans. No, sir; I never went in a stern-wheel boat till I came here in the spring of 1856.

Sixth interrogatory. Have you been running stern-wheel boats since you came here, up to the present time?

Ans. Yes, sir.

(Question objected to by libellants as leading.)

Seventh interrogatory. Do you know the tug W. K. Muir, of Milwaukee?

Ans. Yes, sir; I have seen her a number of times, but never sailed her; I have not been in her much.

Eighth interrogatory. Do you know about her capacity?

Ans. Nothing but from hearsay.

Ninth interrogatory. What have you heard of her capacity?

(Objected to by libellants' proctor.)

Ans. She was a good boat; well, we were in there about two years ago, and they wanted to bet with us about running and pulling; that time I was in a boat double her power, or nearly so.

Tenth interrogatory. Do you know what her horse-power is?

Ans. I do not.

Eleventh interrogatory. How large is her cylinder?

(Objected to by libelants' proctor, on the grounds that it makes no difference whether she was a strong or a weak boat, as her strength or weakness would not justify her colliding with another vessel she had in tow.)

Ans. I am not positive, but I think the bore is sixteen inches and eighteen stroke.

207 Twelfth interrogatory. Is her wheel greater or less than the ordinary size?

Ans. I think it is about the ordinary size, in the neighborhood of seven feet.

Thirteenth interrogatory. Do her boilers make steam enough to work her?

Ans. Yes, sir.

Fourteenth interrogatory. If the Muir had a vessel in tow drawing less than ten feet of water—

(Answer waived, and next question substituted.)

Fifteenth interrogatory. Do you know the schooner Winslow?

Ans. Yes, sir.

Sixteenth interrogotory. If the Muir had her in tow, loaded, drawing about ten feet of water, running at the rate of four miles an hour, if you were managing the tug and should meet a vessel running steadily up between the piers, at Milwaukee harbor, within forty feet of the south pier, and you were in the centre or to the southward of the centre of the Milwaukee river two hundred and fifty feet, and opposite the Straight Cut, heading southeast, and should observe that the vessel coming up would not mind helm at all, could you take the Winslow out between such vessel and the south pier with safety?

(Objected to by libellants' proctor, because it is leading, assumes facts not in proof, to wit, that those having the tug in command had knowledge of the fact that the Alleghany would not answer her helm; and further, that the testimony sought to be elicited is not material; and further, that the witness has not been qualified as an expert.)

Ans. By George, that is a pretty hard thing to answer. If they would give me forty feet room clear all the time I could do is, and the vessel was a good steering vessel, and moved from the tug.

Seventeenth interrogatory. Suppose you had a hundred feet clear, would there be any difficulty in taking her out?

Ans. No, sir, I don't think there would.

Eighteenth interrogatory. If you were aboard the Muir, and had the schooner Winslow in tow, running from four to six miles an hour, and laden, could you stop her in running two hundred and fifty feet?

Ans. No, sir.

208 Nineteenth interrogatory. How far would you have to run before you could stop her?

Ans. I should think, from the time I commenced till I got her stopped, I would go over six hundred feet; I think not less than that, going at the rate of five miles an hour.

*Nineteenth interrogatory. If you were going four miles an hour, how far would you run before you would be able to stop her?

Ans. Well, these questions are pretty hard to answer, for much depends on the vessel. If the vessel was handled light, and you gave the tug an opportunity to get along side of her quickly, I should suppose she could be stopped in three to four times the vessel's length.

Twentieth interrogatory. If you had your lines made fast, ready to back, how long would it take to stop?

(Objected to by libellants' proctor; that is not the usual mode of towing in these waters.)

Ans. I should think you ought to stop from two to three hundred feet,

Twenty-first interrogatory. How near, running a southeast course, at four miles an hour, toward the pier, could you run the Winslow to the south pier and take her out safely?

(Objected to as immaterial; and further, that the tug man, in straightening up to make the bend, after giving and receiving the signals determining the course of the approaching vessels, could not apprehend or guard against the act of the one vessel coming down on him without change of course when he was making such turn; nor would those in command of the tug be bound to guard against such wrongful act of the approaching vessel.)

Ans. Well, you could go within one hundred feet of the pier.

Twenty-second interrogatory. Could you not go nearer?

Ans. I would not consider it advisable to go any closer, steering a southeast course, right straight at it; it would not be safe to go any closer than that.

Twenty-third interrogatory. At what speed are loaded vessels ordinarily towed in this river, (Chicago?)

(Objected to by libelants' proctor as immaterial.)

Ans. From two to three miles.

Twenty-fourth interrogatory. How is it in Milwaukee harbor?

Ans. I am not acquainted enough with the mode of doing work there to be able to tell.

209 Twenty-fifth interrogatory. So far as you have observed, how is it?

(Objected to, because the witness has already answered that he don't know.)

Ans. Have never taken notice enough to know.

Twenty-sixth interrogatory. Well, do they tow them faster there than they do here?

Ans. I said once that I had not taken notice enough to be able to say, but I should think they tow them there a little faster than they do here.

Twenty-seventh interrogatory. Would it often happen to a master of a tug, in towing vessels, who should meet another vessel coming in an opposite direction, which was going steadily on her course without increasing her speed, that the vessel which was met would come in collision with their tow, without their apprehending it until after the tug had passed by the bows of the vessel?

(Objected to by the libelants' proctor, on the ground that the question is irrelevant and not material.)

Ans. No, sir.

Twenty-eighth interrogatory. Could it, in your opinion, happen that a vessel in tow should be struck at an angle of thirty degrees with her course by the stem of a vessel met, as supposed in the last question, running steadily on her course, and such collision not be apprehended by the master of the tug until after the tug had passed the bows of the vessel met, without carelessness on the part of the master of the tug?

Objected to by the libelants' proctor; the reason is the same as that given in the last preceding question.)

Ans. It could not occur without the captain of the tug knowing it would occur before he crossed the vessel's bow; it could not, without carelessness on the part of the captain of the tug, or inexperience.

Twenty-ninth interrogatory. If a vessel was being towed two miles and a half an hour, how near could you go with safety to the south pier, running on a southeast course?

Ans. Well, you could run the bows of the vessel within twenty-five or twenty feet.

Thirtieth interrogatory. What would be the course of the tug, with a tow down the Milwaukee river and out of the Straight Cut, which had signaled that she would keep to the right, provided there is water enough all over the river, as exhibited on the plat here?

210 (Objected to, because the question does not give the signals in proof nor the exact locality of the vessel; and the question is indefinite.)

Ans. Well, if I was going down the Milwaukee river with a vessel in tow, I should keep close over on the starboard side, all the way out, till I passed the vessel I had signaled or had signaled me.

Thirty-first interrogatory. If there is water enough, is there anything to prevent such a course?

Ans. No, sir; I think I should do it at all times with a loaded vessel?

Thirty-second interrogatory. Supposing the river to be five hundred feet wide opposite the Straight Cut, is there any difficulty in getting a vessel straightened up parallel with the harbor piers before

you enter between the harbor piers; and if so, state what the difficulty is?

Ans. There is none that I know of; I should consider it good judgment to have the vessel about straight to go between the piers, for she has got more room to straighten up before she goes into the piers than she has after she goes into them.

(Question objected to by libelants' proctor as leading.)

Thirty-third interrogatory. What do you mean by a signal of one whistle?

Ans. That I am going to keep the starboard side of the river.

Cross-examination by Mr. Van Dyke:

First cross-interrogatory. How much of the time since '56 have you been on a tug in Chicago harbor?

Ans. All the business part of the season till the spring of 1864; and off and on during '64.

Second cross-interrogatory. In what capacity?

Ans. As master of a tug.

Third cross-interrogatory. Whose tug or tugs have you been employed on during that time, and how long upon each?

Ans. Have been on boats belonging to Mr. Bowman and myself in company.

Fourth cross-interrogatory. Who else did you sail for here beside yourself and company?

Ans. Nobody.

Fifth cross-interrogatory. Did you ever manage a tug and, if yea, how long, in the harbor of Milwaukee?

211 Ans. Merely to go in and come out again.

Sixth cross-interrogatory. How often?

Ans. I can't tell. I have been there a good many times. I can't tell how often.

Seventh cross-interrogatory. How often have you towed vessels out of the harbor at Milwaukee?

Ans. Well, I can't tell; I have towed out quite a number; can't tell how many; stopped there with vessels from the foot of the lake, to get fuel, and towed them in and towed them out again.

Eighth cross-interrogatory. Were you ever engaged in the business of towing vessels in the harbor of Milwaukee?

Ans. No.

Ninth cross-interrogatory. Do you know how much of a bend the channel of the Milwaukee river makes in entering from the river to the Straight Cut.

Ans. I should think it about the fifth part of a circle; in the neighborhood of seventy degrees.

Tenth cross-interrogatory. With a vessel in tow making that bend, is the vessel apt to swing?

Ans. On the start they are apt to swing too much, but before they straighten up the tug has to help them round a little generally, unless it is a very good steering vessel.

Eleventh cross-interrogatory. Where would that swing carry the

vessel in turning the knuckle of the bend at the entrance of the harbor piers from the river, unless the tug helped them in making the turn?

Ans. She would fetch up on the south pier.

Twelfth cross-interrogatory. What berth should the tug give the north pier to prudently guard against the vessel's swinging on the pier?

Ans. Well, if there was nothing in the way, a man should keep the middle of the river.

Thirteenth cross-interrogatory. Why should he keep the middle of the river.

Ans. No particular reason; only it is customary with sailors and tug men.

Fourteenth cross-interrogatory. Why do you tow usually at
212 the rate of two to three miles an hour in the Chicago river, and is your rate of speed governed by the crowded condition of the harbor and the crooked condition of the river?

Ans. Our rate of speed is governed by the number of the bridges, and so many vessels transferring, and the shallowness of the water.

JOHN A. CRAWFORD.

JOHN PRINDIVILLE, being sworn, testified:

First interrogatory. What is your name, age, occupation, and place of residence?

My name is John Prindiville; am of lawful age; my occupation is a mariner; I live in Chicago; my business now is marine inspector for the board of underwriters.

Second interrogatory. How long have you been a sailor?

Ans. Twenty-seven years. I commenced in 1838, and sailed until the year 1856.

Third interrogatory. Have you ever been employed in navigating steam tugs on these lakes?

Ans. I have.

Fourth interrogatory. How long?

Ans. About six years; from 1856 to 1862.

Fifth interrogatory. Have you ever been in and out the Straight Cut harbor at Milwaukee with tugs?

Ans. I have.

Sixth interrogatory. Do you know the tug Muir?

Ans. I have been aboard of her. I know she is a double-engine boat, but I don't know her power.

Seventh interrogatory. Do you know how wide the river is opposite the Straight Cut at Milwaukee?

Ans. I do not.

Eighth interrogatory. Do you know how wide it is between the piers?

Ans. I don't know the number of feet.

Ninth interrogatory. Have you ever navigated a propeller on the lakes?

Ans. I took the propeller Tonawanda down one trip two years ago.

213 Tenth interrogatory. If the depth of water will admit it, is there any, and if any, what difficulty in the tug Muir towing a vessel of the size of H. C. Winslow, loaded so as to draw nine and a half feet water, out of the harbor at the city of Milwaukee, on such a course that she would not at any time be more than fifty feet distant from the south side of the river until she crossed the channel to go into the Straight Cut, and that she would not be more than fifty feet distant north from the west end of the south pier when she entered the Straight Cut?

(Question objected to by proctors for libellant as immaterial.)

Ans. There would be no difficulty if there were no vessels in the way along the docks.

Eleventh interrogatory. If there is water enough and no vessels in the way, could you keep nearer than fifty feet to the dock and piers with safety?

Ans. I should think you could.

Twelfth interrogatory. If you were drawing a vessel out of the Milwaukee harbor with the tug Muir, and should see a propeller coming in and signal her with one whistle, and she kept steadily up between the piers on a line thirty feet south of the centre between the piers, the piers being two hundred and sixty feet apart, would there be any difficulty in taking a vessel out between the south pier and the incoming propeller?

(Question objected to by proctor for libellants, because the question presupposes a case, for the expert testimony, not presented by the facts in proof.)

Ans. There would be no difficulty unless it was a very bad steering vessel; there would be ample room.

Thirteenth interrogatory. With how little room could you take a vessel out safely, meeting a propeller under such circumstances, if you had water enough under you, and the vessel in tow drawing nine and a half feet water steered well?

(Question objected to by proctor for libellants as immaterial, and because the propeller in this case pursued a different course and direction than she was bound to do and agreed to do by the signals.)

Ans. With a steerage-way on the vessel of three or four miles an hour, sixty feet would be enough room.

Fourteenth interrogatory. Could you go out safely with a
214 space of sixty feet, if the point of meeting the ascending vessel was seventy-five feet or more east of the west end of the piers?

Ans. If the vessel was on a direct line with the propeller, I could.

15th interrogatory. If the vessel was in such position as she would properly take in towing out, and the propeller was coming up steadily, directly in line with the piers, and sixty feet distant from the south pier, would there be any danger in taking the vessel past the propeller, supposing the bow of the propeller where you met her was sixty feet or upwards east of the west end of the piers?

(Question objected to by proctors for libelants as immaterial as expert testimony.)

Ans. If the propeller was coming up under a check, steering steadily, there would be plenty of room.

Sixteenth interrogatory. Suppose the river to be four hundred and fifty feet wide from the west end of the piers, and there was nothing along the docks opposite block sixty-six and sixty-five to prevent your running close to them, is there any difficuly in getting a vessel straightened up to go out of the harbor piers by the time she has got sixty feet within the piers, the vessel steering well and drawing nine and a half feet water?

(Question objected to by proctors for libelant as expert evidence, for the reason that it is immaterial and assumes as a fact which is not proved and is not in evidence, that the river in front of and in proximity to block sixty-six is navigable, and that the space between the west end of the harbor piers and the lower end of block sixty-six is navigable.)

Ans. There would be no difficuly.

Seventeenth interrogatory. If a master of a tug, towing a vessel out of the Milwaukee harbor, should see a propeller coming in which he would probably meet at some point between the west end of the habor piers and a point three hundred feet east of the west end, would it be, in your opinion, good seamanship for him not to have his vessel straightened up as soon as he conveniently could in making the turn?

(Question objected to by proctors for libelants as immaterial.)

Ans. It would not be good seamanship if he did not straighten her up as soon he possibly could.

215 Eighteenth interrogatory. If the wind was blowing an eight knot breeze from the southwest, would it make the management of the vessel by the tug, in coming out of the Milwaukee harbor, more difficult if the sails of the vessel, or any of them, should be set?

(Question objected to as assuming a fact not in proof.)

Ans. That would be a pretty fresh breeze, and it would be more difficult.

Nineteenth interrogatory. If the foresail of the vessel should be set there, the wind blowing a good sailing breeze, would the raising and setting of the foresail make it more or less difficult for the tug to have brought her around into the cut on the south side?

(Question objected to as immaterial and based upon an assumption of facts not in proof.)

Ans. If it was not blowing fresh, it would not make much difference with a tug of that size.

Twentieth interrogatory. If the lines with which the tug was towing the vessel were allowed to remain slack while the tug and vessel were making the turn, what effect would the foresail set on the vessel have had in bringing her toward or keeping her away from the south pier?

(Question objected for the same reason as last question.)

Ans. The foresail would help to pay her head off to the port or left, with a wind from the southwest; the mainsail would bring her to the right or starboard side.

Twenty-first interrogatory. If the master of a tug towing a vessel out like the Winslow should see a propeller coming in the Straight Cut, which he must meet somewhere about in the bend of the river, and the wind were blowing fresh from the southwest, would you call it good seamanship in him to allow the vessel to set her sails before she met the propeller; and if not, why not?

(Question objected to by proctors for the libelant as immaterial and inadmissible.)

Ans. He is got nothing to do with making sail for the vessel.

Twenty-second interrogatory. Would it be good seamanship on the part of the master of the vessel to do it?

(Question objected to by proctor for libelants as immaterial, inadmissible, and it is based upon the assumption that the whole
216 responsibility in passing devolved upon the tug and vessel without regard to the propeller.)

Ans. The vessel would be easier handled by the tug without her sails set, but there is so much room in the Milwaukee harbor and between the piers that I should not consider it bad seamanship; it is the custom in Chicago, after they get through the last bridge, to commence making sail.

Twenty-third interrogatory. Would it be good seamanship on the part of the master of the tug to assist the master of a vessel in making sail, under the circumstances supposed in the twenty-first interrogatory?

(Question objected to by proctor for libelant as unintelligble and inadmissible.)

Ans. I can't get at the question; the only way that I can see he could assist him is by slowing down to give him opportunity to make sail.

Twenty-fourth interrogatory. Would you call slowing down to give the master of the vessel opportunity to make sail, under the circumstances supposed in the twenty-first interrogatory, good seamanship?

(Same objection as to the twenty-first interrogatory by proctors for libelants.)

Ans. I can only answer that as the other question; if there was any danger or probability of a collision, it would not be good seamanship, for the vessel would not handle as well with sails as without.

Twenty-fifth interrogatory. If you were running down about the centre of the channel of the Milwaukee river, having a vessel in tow that steered well of the size of the Winslow, and should see a propeller coming up from two hundred and fifty feet to three hundred feet distant, which you saw would not answer her larboard helm, and which was right in your course, and which you must meet about seventy feet from the west end of the piers, and your vessel was running three miles an hour, and the propeller was ninety feet from the south pier, how far could you get the vessel you were towing south from the course in which you were running before the vessel in tow should meet the propeller, (the propeller not running more than three

miles an hour,) and not be in danger of running the vessel on to the south pier?

(Question objected to by proctor for libelants, because the question ignores the fact in proof that the propeller had signalled her
217 intention to go to the north, and assumes the fact not in proof that the master of the tug knew at the time that the propeller would not answer her helm.)

Ans. From ninety to a hundred feet from where the vessel was when they were three hundred feet apart.

Twenty-sixth interrogatory. If the propeller was not running more than half a mile an hour, and you were running three miles an hour, under the circumstances of the last question, would there be any difficulty in taking the vessel out safely the south side of the propeller?

(Proctor for libellant make the same objection as to last question.)

Ans. Not if she was ninety feet from the south pier.

Cross-examination by Mr. Van Dyke:

First cross interrogatory. Have you ever towed vessels out of the Straight Cut in the harbor of Milwaukee; and if yea, how often?

Ans. I have not very often; not more than two or three times, at the most.

Second cross-interrogatory. Did you ever tow a vessel out of the harbor through the Straight Cut, and you met another vessel or propeller coming up the Straight Cut and close on you, when you were making the turn from the river into the Straight Cut?

Ans. No.

Third cross-interrogatory. If you were towing a vessel from the river into the Straight Cut at the harbor of Milwaukee, down the middle of the channel, headed as far on the south pier as it was safe to go, and running at the rate of three or four miles an hour, crossing the bows of the approaching vessel coming up the centre between the harbor piers, distant three hundred feet, would it be possible to collide with your vessel unless she was running at a greater speed than you were, without changing her course to the southward?

Ans. It would be impossible, because you place them in a direct line and the vessel crossing to the south pier, unless the propeller run to the southward.

Fourth cross-interrogatory. At what additional rate of speed would the propeller have to run greater than that of the tug to cause them to collide in the position and on the courses when at the distance presupposed in the last question, if the propeller did not run to the southward?

Ans. No additional rate of speed could have done it if the propeller was going to the southward.

218 Fifth cross-interrogatory. If the vessel in tow had been further north than on a line crossing the propeller's bow, other conditions being the same, how would the speed of the propeller have affected the probability of a collision?

Ans. The slower the speed on the part of the propeller, the less the danger of a collision.

Sixth cross-interrogatory. Do you know the propeller Alleghany, and what kind of a wheel has she?

I know her; she has a Philadelphia wheel, as I am informed by the owner, and they all work to the starboard.

Seventh cross-interrogatory. Do these Philadelphia propeller wheels, of about the size used on the Alleghany, when reversed, arrest the forward movement of the propeller as quickly as the old style of wheel; if not, why not, and what is the difference as near as you can give it?

Ans. In the first place, a Philadelphia wheel the same size as the old wheels, and the same lead, may check a propeller's way as quick as the others, but they are a different lead; the less lead it has got, the sooner it will stop a boat; the Philadelphia wheels will not arrest a boat as soon as the old wheel.

Eighth cross-interrogatory. About how far would a vessel of the size of the Alleghany, and on a speed of about eight miles an hour, headreach after the reversal of the wheel?

Ans. I should think she would go at least four hundred feet.

Ninth cross-interrogatory. About how far at a speed of six miles an hour?

Ans. I should think three hundred feet.

Tenth cross-interrogatory. About how far at a speed of four miles an hour?

Ans. About one hundred and fifty feet.

Eleventh cross-interrogatory. About how far at two miles an hour?

Ans. About sixty feet, backing with the same amount of steam as she had running eight miles an hour; backing in each case would have to be with the same force to limit it to the headreaching stated above.

Twelfth cross-interrogatory. Do you know the angle which the channel of the river makes in entering the Straight Cut at Milwaukee?

219 Ans. I do not know the number of degrees?

Thirteenth cross-interrogatory. Do you know about the number of degrees of the angle?

Ans. I do not.

Fourteenth cross-interrogatory. Do you know the course of the Milwaukee river before it enters the Straight Cut from Walker's point down to the entrance of the pier?

Ans. I think northwest and southeast.

Fifteenth cross-interrogatory. Do you know the course of the harbor piers?

Ans. I think they are very nearly east and west.

Sixteenth cross-interrogatory. If you were towing a vessel down the Milwaukee river, and before getting to the turn of the river you should see a propeller coming up south of the, or in the center of the, channel, you would signal her to keep to the northward, she would

recognize your signal, and you would lay your course accordingly in the usual track of vessels going out in tow, what kind of seamanship would you consider it on the part of the propeller if she should keep right on her course after her recognition of the signal, striking your vessel in tow on the port bow, which port bow was at least one hundred and fifty feet from the north pier?

Ans. If there was nothing in the way, and plenty of water, I would consider it poor seamanship in not keeping to the right a little more.

Seventeenth cross-interrogatory. Suppose of that one hundred and fifty feet there were from seventy to eighty feet north of your vessel, of a depth running from twelve to eighteen feet, and the propeller drawing but eleven feet two inches, what would you think of the seamanship on the part of the propeller?

Ans. If the master of the propeller was aware of that fact, I should consider it poor seamanship.

Eighteenth cross-interrogatory. What kind of seamanship would it be in the master of a propeller, after signaling your tug that he would keep to the northward, she should find his propeller would not answer her helm, keep right on his course without stopping his boat when you were in the act of turning the bend of the river in the usual course of vessels entering the Straight Cut?

220 Ans. If he found his propeller would not answer her helm, and the other vessel approaching him in danger of colliding, he ought to have stopt her.

Nineteenth cross-interrogatory. With a propeller going up the Straight Cut, drawing 11 feet 2 inches water, can she be safely steered at a reduced rate of speed under check in twelve feet six inches water?

Ans. I should think so; there is a difference in vessels; some steer well, and some make bad work of it, but a foot and four inches is a fair allowance.

Twentieth cross-interrogatory. How would it be in a depth of 13 feet five inches with a depth of 12 feet, ten feet off?

Ans. I should think she would steer safely.

Twenty-first cross-interrogatory. What kind of seamanship would you regard it for the master of a propeller to bring her in from the deep water to the harbor piers, meeting a vessel coming from the river into the harbor piers, a propeller running at such rate of speed that would cause her to steer so wildly, first running over to the north pier, then towards the south pier, before they could straighten her up in her course?

Ans. It was his duty to check her down when he found that she did not steer.

Twenty-second cross-interrogatory. At what rate of speed, in your judgment, would it be safe for the Alleghany to enter harbor from deep to shoal water, other vessels passing out of the Straight Cut at the same time?

Ans. Before she entered the pier, six or eight miles an hour; and at the entrance of the pier a less rate, four or six miles an hour.

Twenty-third cross-interrogatory. Should any vessel run at a greater rate of speed while in the harbor or entering the harbor than at which her commander can control her perfectly with her helm?

Ans. No, sir.

Twenty-fourth cross-interrogatory. How much trouble is it to stop a propeller under a headway of four miles an hour, and is it anything unusual?

Ans. It is not unusual, and not a great deal of trouble.

Twenty-fifth cross-interrogatory. In reversing a propeller's wheel of the Philadelphia pattern, which works astarboard or forward motion, how will the backward motion of the wheel steer the bow?

221 Ans. To the right.

Twenty-sixth cross-interrogatory. Suppose at the time the wheel is reversed the helm is astarboard, which way would the bow slue?

Ans. To the right and with the helm aport, with stern motion, it would go to port.

Re-examination by respondents:

First interrogatory. Do you understand the statement in the third cross-interrogatory to place the descending vessel as far south as the centre line of the piers?

Ans. Yes.

Second interrogatory. The sixteenth cross-interrogatory supposes that if you were towing a vessel out of the Milwaukee river, and should meet a propeller coming up which should use the north one hundred and fifty feet of the channel, leaving you ninety feet, that the propeller would run into the vessel you had in tow; have you the least idea that that would be the case?

(The question objected to by proctors for libelant, because the question alluded to does not presuppose anything, but the witness was asked what kind of seamanship it would be for the master to do such a thing.)

Ans. I had no such idea.

Third interrogatory. In the seventeenth cross-interrogatory it is supposed that there are from seventy to eighty feet north of the centre of the propeller deep enough to float the propeller; if there were to the south of that point one hundred and ten feet of water deep enough to float the propeller, and you were assured of that fact, would you still say that it was bad seamanship on the part of the master of the propeller not to have gone further north?

(Question objected to by proctor for libelant, because it is not the question and the sense of the question alluded to.)

Ans. She had room enough to go through.

Fourth interrogatory. If the propeller was running eight miles an hour approaching the piers and checked down to one-third, how far would she run between the piers before her speed would be reduced to what would be given by the engine so checked down?

222 Ans. Coming into shoal water, she would not go over two

hundred feet; it would make a difference of three miles an hour in her speed.

Fifth interrogatory. If her engines were stopped entirely after she had come in five hundred feet, how far would she run before she would stop still.

Ans. She might run up to the bend of the river, if they could steer her before she would lose her way altogether and no wind to stop her.

Sixth interrogatory. If they stopped her engine after she had been running between the piers for seven hundred feet, and she ran three hundred feet after the engine stopped entirely, how fast do you think she would be going then?

Ans. She could not be going very fast; there would be hardly any way on her.

Seventh interrogatory. If when she had run three hundred feet without the engine, the engine had been reversed and worked with all the steam the vessel had, how long would it have taken to have stopt her motion entirely?

Ans. It would not take a minute; three or four revolutions of the wheel would have done it.

Re-cross-examination by libelant:

First cross-interrogatory. If the tug, while in the river at "E" opposite "66," first signaled the propeller, she just then having entered the east end of the piers, and they came in collision at about the west end of the harbor piers, or sixty feet east of that, would the tug or the propeller have to run at the greater speed to reach that point, the tug in the mean time slacking up to make the turn into the Straight Cut?

Ans. The propeller would have to run at the greater speed.

Second cross-interrogatory. You answered in question seventeen, on cross-examination, that if the propeller had eighty feet in width of water sufficient depth to navigate her when she accepted the signal of the tug to go north, and the tug laid her course accordingly, that it would be bad seamanship for the propeller to keep her course and not go to the north according to signal; now, what possible difference could it make in regard to the duty of the propeller whether there was room enough south of the tug and vessel, if the tug
223 laid her course upon the signal given and accepted, leaving room enough for the propeller to go north?

Ans. I answered in the other question, that if there was nothing in the way, and he knew there was water enough, it would have been bad seamanship; I don't see what possible difference it could make in regard to the duty of the propeller.

JOHN PRINDIVILLE.

JOB HICKMAN sworn and testified:

First interrogatory. What is your name, age, occupation, and place of residence?

Ans. Job J. Hickman is my name; am of lawful age; I am cap-

tain of a tug-boat; have been for the last nine or ten years; I live in Chicago.

Second interrogatory. Have you ever been in the harbor of Milwaukee and run tugs there?

Ans. Yes, sir.

Third interrogatory. What tug?

Ans. W. K. Muir.

Fourth interrogatory. How large are her engines?

Ans. I don't remember.

Fifth interrogatory. What sort of a vessel is she for power?

Ans. She has plenty.

Sixth interrogatory. How does she handle?

Ans. She handles well; she has as much power and handles as well as any other tug.

Seventh interrogatory. How long were you on the Muir?

Ans. About ten months altogether, in Milwaukee.

Eighth interrogatory. How fast do you tow vessels on the average in Chicago?

(Question objected to.)

Ans. As fast as they can.

Ninth interrogatory. How fast could you tow a vessel of the size of the Winslow in the Chicago river with safety?

224 Ans. About four miles an hour.

Tenth interrogatory. How fast in Milwaukee?

Ans. Twice as fast; there is not half or quarter the danger there in towing vessels.

Eleventh interrogatory. If you were towing a vessel of the size of the Winslow out of the Milwaukee harbor, and should see a propeller coming in and signal her with one whistle, and she kept steadily up about thirty feet south of the centre line of the piers, would there be any difficulty to you, if you had the Muir, to take that vessel to the southward of the propeller?

(Question objected to by proctor for libellant, as it is immaterial what he could have done if he had known beforehand that the propeller was not going to act upon the signals given and accepted; and also the question is indefinite as to locality.)

Ans. Not if he had answered the whistle with one whistle.

Twelfth interrogatory. If you should meet a propeller under those circumstances and signal her, and she should not answer your signal, what difference would that make with your course?

Ans. It would make all the difference in the world; if she had answered my whistle there would have been no difficulty, for the propeller could not hit me without coming to the south pier to do it; but if she had not answered, I would have gone very slow till I saw a [a] hole big enough to get through.

Thirteenth interrogatory. Suppose you did not hear her answer, and when you got down, so you could see out of the Straight Cut, you saw the propeller coming up steadily about her width south of the centre of the piers, and saw the men on the propeller roll her wheel hard over to send her to the north side, and she would not follow

or mind it, would it make any difference in your course, after you saw she would not mind her helm, that she had not answered you?

(Question objected to by as immaterial, and that the question is not based on any evidence in the case as to the then intervening distance between the vessels or knowledge of the master or crew of the tug of those in command of the Alleghany.)

Ans. No, as long as she would be going steadily; after I had got as near as that to the propeller, I would not allow her to run over me, unless she did alter her course, providing they met below the bend.

225 Fourteenth interrogatory. What do you understand by giving one signal?

Ans. That each of us was to keep on the starboard side.

Fifteenth interrogatory. If you saw him, after you got within 250 or 300 feet of him, roll his wheel over so as to send it to the north or right-hand side, would you understand from that which side he intended to pass you?

(Question objected to as immaterial so far as the action of the tug was concerned on the vessel in tow, the tug and the propeller had got into close proximity to each other in the peculiar locality in which the tug and tow then were.)

Ans. I should judge from the motions of the boat and not the wheel, because the wheel chains rove different ways.

Sixteenth interrogatory. What effect does it have on the handling of a vessel in tow to set canvass on her when there is a fresh wind blowing?

(Question objected to as immaterial, there being no such evidence in the case as fresh wind blowing.)

Ans. That would depend on what canvass.

Seventeenth interrogatory. If her fore and mainsail, what would be the effect?

(The question objected to, on the ground that there is no evidence that the foresail and mainsail were set.)

Ans. She would be almost unmanageable with an eight knot-breeze.

Eighteenth interrogatory. What effect would setting the foresail alone on her have?

Ans. Nothing but to give her a little more headway.

Nineteenth interrogatory. With the wind blowing freshly from the southwest, would it not be more difficult to bring her round the turn and straighten her up with the foresail set?

(Question objected to by proctors for libelant, for the same reasons assigned in the objection to the two preceding questions.)

Ans. It would not.

Twentieth interrogatory. What effect would it have to have the foresail fastened at midships?

(The same objection made by proctor for libellant as to last question.)

Ans. Unless the vessel had lots of headway, it would give her lot of leeway.

226 Twenty-first interrogatory. If the vessel was running three

or four miles an hour, and the wind blowing fresh from the southwest, wouldn't the foresail fastened to the midships make it much more difficult for the tug to keep the vessel on the south side of the channel of the river in coming around and making the turn?

(Proctor for libellant makes the same objection as above.)

Ans. With the wind fresh to the southwest, it would.

Twenty-second interrogatory. Is there any difficulty with the tug Muir, having a vessel of the size of the Winslow in tow going out of the river, to make the turn and get the vessel straightened up before the vessel gets between the piers?

(Question objected by proctors for the libelant as immaterial.)

Ans. There would be no difficulty with a vessel of the size of the Winslow.

Twenty-third interrogatory. If in towing out a vessel like the Winslow, if she has her foresail set, and it becomes necessary for any reason that the tug should slacken her speed, wouldn't the foresail make her more difficult for the tug to handle than she would be if she wasn't set?

(Question objected to as indefinite and immaterial.)

Ans. Yes; if it was blowing fresh.

Twenty-fourth interrogatory. If you were towing a vessel out of the harbor at Milwaukee, with the wind blowing fresh from the southwest, and should see a propeller coming in which you must meet near the entrance of the Straight Cut, would you consider it good seamanship on your part to run slow so as to allow the master of the vessel to set his canvass—his fore-and-aft canvass—or any of it?

(Question objected to by proctor for libelant, because the evidence is that the wind was not blowing fresh on the morning of the collision.)

Ans. I never heard of such a thing as checking down for the purpose of letting a man make canvass, towing out of the harbor such as that.

Twenty-fifth interrogatory. If you were on the Muir towing the Winslow, and should meet a propeller coming up, and, when you got within two hundred or three hundred feet of the propeller, should observe that she was within seventy feet of the south pier and directly in your track, and that you must meet her about seventy feet east of the west end of the piers, would you be able—your vessel
227 going three to four miles an hour—to take your vessel out to the southward of the propeller, supposing you had before that time been running such course as you would take if you had signaled the propeller that you would keep to the right going out?

(Question objected to as immaterial what he might possibly do under any given circumstances of danger apart from the relative duties of the two vessels approaching each other on the morning of the collision in question, and is indefinite as to the position of the tow and propeller, and is an assumption as to the speed of the propeller.

Mr. Van Dyke here wishes to state, on the witness asking to have the question re-read to him, the counsel for the libelant claims and insists upon having recorded the reply of the witness when the ques-

tion was first put to him, which was in the words and figures and following: "If I had got as close as two hundred feet to an approaching vessel on my track, and within seventy-five feet of the south pier, I should feel like making tracks myself." And the said counsel asks the commissioner that the words aforesaid are in effect the reply of the witness when the last preceding question was read to him.

The counsel for the respondent insists that the remark of the witness was made in this wise, that after the question was read over to the witness, he stated to the counsel for the respondent before answering the question he wanted an explanation, that he wanted to know what he was to understand by the word course; that thereupon the counsel for the respondent replied, he meant the way he was going, hat is, the track he should pursue.

And thereupon counsel for respondent changed "course" to "track," the witness replies, that is different, and then added the remarks which Mr. Van Dyke claims as the answer.)

Ans. I don't know what answer to make to the question.

Twenty-sixth interrogatory. If you were in the Muir, towing out the Winslow at the rate of three or four miles an hour, in the direction you would take if you had signaled you would go out to the right, and should meet a propeller coming in, running two miles an hour, and when you get within 250 or 300 feet of the propeller, should observe that she was within seventy feet of the south pier di-
228 rectly in your track, and that you must meet her about seventy feet east of the west end of the piers, would you be able to take your vessel out to the southward of the propeller; and if not, what space would you have required between the propeller and the pier to have taken the vessel out?

(Question objected to for the same reasons as the last question, and that it is leading.)

Ans. It could be done; it is not impossible; it would not need a great deal more room than the width of the vessel.

Twenty-seventh interrogatory. What amount of room in addition to the width of the vessel would you require to take the vessel out with safety under such circumstances?

(Proctor for libelant makes the same objection as to last question, except that it is not leading.)

Ans. Twenty or thirty feet on each side of her, because her yards may be squared.

Twenty-eighth interrogatory. If her yards are braced up, what space would it take?

(Question objected to for the same reasons as last.)

Ans. It would be about the same space going three or four miles an hour; that is not too much for safety.

Twenty-ninth interrogatory. Couldn't you do it with twelve feet on either side?

(Same objection.)

Ans. I could, but would not warrant the safety.

Cross-examination by Mr. Van Dyke:

First cross-interrogatory. In questions put to and in your answer, the phrase "wind blowing fresh from the south-west" has been used; what do you understand by the wind blowing fresh from the south-west?

Ans. Blowing hard enough to drive such a vessel as the Winslow, with all her sails set, eight or ten miles an hour.

Second cross-interrogatory. Would the Winslow have towed after the tug with her lines taut, with the wind blowing with the force you have stated in your last answer, making the bend in the track of the tug or to the southward of the track of the tug, with her fore-sail up and her mainsail partly up, the boom fast amidships, sheets not started, the upper yards braced up sharp, the sails furled on the yards, and the foreyards a cock-billed, the tug running at the rate of three or four miles an hour?

229 Ans. Yes, sir.

Third cross-interrogatory. Could she have been in any better trim for towing? With that wind, I mean.

Ans. Yes, to put the jibs on her; she would come around the bend better.

Fourth cross-interrogatory. What would you understand with a nice sailing breeze, with a fair morning and pleasant weather?

Ans. It is what I should call a four or five knot breeze.

Fifth cross-interrogatory. With a four or five knot breeze, and the Winslow in the trim presupposed in a previous question, was she in a proper trim for towing?

Ans. Yes, but not with the wind blowing fresh from the southward.

Sixth cross-interrogatory. To interrogatory No. 26th you answer you could have taken out the vessel under the circumstances therein stated, that it would not be an impossibility; now, suppose you had not yet straightened up when you found the propeller approaching within seventy feet of the south pier, but you were just in the act of turning the knuckle of the bend from the river into the piers, how would that effect your ability to complete your turn and run south of the propeller, in case she came down upon you before you had your turn made?

Ans. If I was meeting a propeller there under such circumstances in daylight, I should have the turn made by the time I got seventy feet east of the west end of the south pier; and I certainly would not be in the act of making the turn there, because that is not the knuckle of the bend as I look at it.

Seventh cross-interrogatory. The question last put to you does not state you were seventy feet east of the west end of the south pier, but distinctly and pointedly states and assumes you to be in the act of making the turn at the knuckle of the bend, the propeller distant two hundred or three hundred feet, and within seventy feet of the south pier, the propeller running four miles an hour; will you now answer the question as made plain?

Ans. She could not do it without she met right on the bend.

Eighth cross-interrogatory. She could not do what without she met right on the bend?

Ans. Couldn't have any collision; that is, she could not meet me on the knuckle of the bend, she within seventy feet of the south pier.

230 Ninth cross-interrogatory. If you were on the tug Muir, with the Winslow in tow, and signalled the propeller coming up the Straight Cut to go to the north, and she replied to that signal, and when you had approached to within two or three hundred feet of each other, you then being in the act of making your turn to enter the piers, the propeller holding her course instead of giving away according to her signal, and should in fact strike your vessel on her port cat-head before she came around, and that within seventy feet of the south pier, how could you have helped yourself or prevented it?

Ans. I should not have had my vessel in that shape within seventy feet of the south pier.

Tenth cross-interrogatory. State fully what you would have done, being compelled to make the turn from the river to the Straight Cut, having signalled that you would take the south side and the propeller signalled that she would take the north side, and yet finding she was holding her course without changing, and you were in the act of making the turn.

Ans. If she, the propeller, had not got out of the Straight Cut, it would have been easy to have gone clear of her.

Eleventh cross-interrogatory. Suppose, before you had got through with your turn, she had got out of the Straight Cut?

Ans. She would have the chance to run over me, then, and we would have had the collision.

Twelfth cross-interrogatory. Would you have dared to run to the north side after you had signaled that you would go to the south side?

Ans. No, sir; never while a shingle holds together.

Thirteenth cross-interrogatory. Why wouldn't you?

Ans. Because I would have been all to blame in case of a collision.

Re-direct examination by respondents:

First interrogatory. How near to the west end of the north pier would the stem of the Winslow have come if she had taken the course she ought to have taken, after having signaled that she would keep to the right?

(Question objected to by proctor for libelant as immaterial and not cross-examination.

231 Ans. About two hundred and fifty or three hundred feet.

Second interrogatory. In your answer to one of Mr. Van Dyke's cross-interrogatories, in a certain situation of the vessels to each other there might be a collision, where do you understand that the question supposes the vessels to be?

Ans. At the point marked "O" on the map.

Third interrogatory. What would you think of the seamanship of the captain of a tug towing a vessel out of the Milwaukee river,

allowing his tow to collide with the propeller, coming steadily up in a line thirty feet south of the centre of the piers, at a point seventy-five feet east of the west end of the piers, who had not yet straightened up his vessel, but was running still at an angle across the channel?

(Question objected to by proctor for libelant, because it is based upon assumed facts as to the point of the collision, which is assumed against the weight of proof in the case, and ignores the fact of the signals being given fixing the courses of the respective approaching vessels, on the observance of which signals the master of the tug would have a right to rely in the management of his own vessel.)

Ans. I should not think much of his seamanship.

Re-cross-examination by proctor for libellant:

First ques. What would you think of the seamanship of the master of a propeller coming up the Straight Cut, after having signaled you that he would take the north side, if he should run into you when he was making the turn at the knuckle of the bend?

Ans. If he ran against me at the knuckle of the bend where I have located it, I should think it bad.

Second ques. What would you think of the seamanship of the master of a propeller coming up the Straight Cut, after having signaled you that he would take the north side, if he should run into you within 75 feet of the south pier when he had at least 100 feet of navigable water to the north of him and nothing in his way?

Ans. I should think it very poor, unless the vessel I had in tow was across or partially across the river.

Third ques. How would that change your views in regard to the seamanship of the master of the propeller if he had plenty of room, notwithstanding the vessel was partially across the channel?

232 Ans. The more the vessel was across the channel the less room he would have. You can take any vessel and put across the jaws of the channel, and prevent a propeller passing to the northward. If he had room enough and time enough to handle his vessel, and ran into my tow, I should think him a fool.

Fourth ques. What part of the river would you expect to have in towing a vessel down, if a propeller should happen to be coming up?

Ans. All of the right-hand half that I could get; I should calculate to get my half, but we seldom do with propellers; they generally draw more water than vessels, and we always give way to them a little.

Fifth ques. Would you consider it good seamanship on the part of the master of a propeller, if a vessel in tow of a tug should get across, or partially across, the channel in making the bend, for the master of a propeller to proceed right on his course and strike the tow, if he could stop his propeller until the tow had crossed the line of his course?

Ans. No, sir.

Sixth ques. You have answered that the stern of a vessel in tow on entering the Straight Cut, should not run nearer than from two hundred and fifty to three hundred feet of the north pier. How wide

do you understand the navigable part of the water between the piers to be?

Ans. I answered that a vessel's stern should not be within two hundred to three hundred feet of the north pier if she was meeting a prop eller running within seventy feet of the south pier. I don't know about the width of the navigable water in feet.

Re-direct:

First ques. How far southwest from the west end of the north pier should a vessel pass in going out after the tug had signalled that she would pass to the right?

Ans. It would depend where the propeller was; if she were close to the turn, I should keep off as far as I could; her stern should be from two to three hundred feet.

Cross-examined:

First interrogatory. What do you mean by your answer that if the propeller was close to the turn, the stern of the vessel in tow should be two or three hundred feet from the north pier?

233 Ans. I mean that if the propeller was within 70 feet of the west end of the south pier and seventy feet north of it, the tug with a vessel of the size of the Winslow passing to the starboard, to pass clear, couldn't be within three hundred feet of the north pier at the time of passing.

Second interrogatory. Suppose the propeller gave way, what would be the need of the vessel's stern being from 200 to 300 feet south of the west end of the north pier, if the propeller was only about 30 feet beam?

(The defendants object that it has not been stated the vessel's stern was from 200 to 300 feet south of the west end of the north pier.).

Ans. If the propeller was not in the way at all, the vessel could go within fifty feet of the north pier.

Third interrogatory. Will the commissioner re-read the question to the witness?

Ans. I can't see the point.

JOB S. HICKMAN.

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235 And afterwards, to wit, at a term of said circuit court of the United States for the district of Wisconsin, begun and held at the city of Milwaukee, on the second Monday of September, A. D. 1867, and on the fifth day of said term, to wit, on the 13th day of September, A. D. 1867, the following proceeding were had, to wit:

Amendments to answer.

SARAH S. WOLVERTON & JAMES E. PITTMAN *vs.* THE PROPELLER ALLEGHENY *et als.* } Admiralty appeal.

This day came the respondents, by their counsel, Mr. Mariner, and, by leave of the court, filed amendments to their answer as follows, to wit:

Circuit court of the United States for the district of Wisconsin.

SARAH S. WOLVERTON & JAMES E. PITMAN
vs.
THE PROPELLER ALLEGHENY and CLAIMANTS, respondents.

And now come the said respondents, by E. Mariner, their proctor, and leave of the court being first had and obtained, amend their answer in this cause by adding the letter "s" to the word "master," in line of page of their answer, and by inserting the words "and vessel" after the word "tug," so that said paragraph shall read, when amended, as follows: "That said collision
236 was occasioned by the carelessness, negligence, and want of skill of the masters of said tug and vessel, in not keeping said tug and said schooner over to the starboard of the channel, as they had signalled said propeller they would do.

E. MARINER,
Proctor for Resp.

DISTRICT OF WISCONSIN, *ss:*

This 13th day of September, 1867, before me, came James Morgan, one of the claimants, and made oath that the foregoing amendments were true.

EDWARD KURTZ, *Clerk.*

And same day stipulation as to dimensions of vessels also filed as follows:

Circuit court U. S., dis't Wisconsin.

SARAH S. WOLVERTON *et al.*
vs.
THE ALLEGHENY and CLAIMANTS.

It is stipulated that the size of the propeller Allegheny is as follows: Length 167 25-100 feet, beam 28 35-100 do., hold 10 5-10, tonnage 582.43. And the Winslow as follows: Length 137 75-100, breadth 25 80-100, hold 10 20-100, tonnage 252.02.

EMMONS & VAN DYKE,
Proctors for Libellants.
E. MARINER,
Proctor for Resp'd'ts.

237 *Hearing.*

And came the parties by their counsel, Mr. Van Dyke and Mr. Newberry appearing for the libellants, and Mr. Mariner and Mr. Beckwith for the respondents, and this cause came on to be heard before the Honorable David Davis, associate justice of the Supreme Court, assigned to this (seventh) circuit, and the hearing not being concluded, the further hearing was adjourned until nine o'clock to morrow morning.

Hearing concluded.

SEPTEMBER 14, 1867.—This day came the parties, by their counsel, and the further hearing of this cause was resumed before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and being concluded, the same was held under advisement.

And now, at this same term, to wit, September term, 1868, and on the 13th day thereof, to wit, on the 28th day of September, A. D. 1868, the following proceedings were had, to wit:

Decree.

SARAH S. WOLVERTON & JAMES E. PITTMAN *vs.* THE PROPELLER ALLEGHENY, and PERRY HANNAH, Albert T. Lay, James Morgan, and William Morgan, claimants, and Harrison Ludington and Charles J. Kershaw, stipulators.	Appeal in admiralty.

238 This day came the parties by their counsel, and the court having considered and being now fully advised upon the matters heretofore submitted herein, it is ordered that the decree of the district court be and is hereby affirmed. And it appearing from the record that a decree was rendered in the district court, on the seventh day of October, A. D. 1865, in favor of the libelants, for the sum of seven thousand two hundred and thirty-seven dollars and seventeen cents damages, together with costs, it is thereupon ordered, adjudged, and decreed by the court that the respondents pay to the libelants the said sum of seven thousand two hundred and thirty-seven dollars and seventeen cents, the amount of the decree aforesaid, together with one thousand five hundred and seven dollars and thirteen cents, the interest on said decree from the said seventh day of October, A. D. 1865, amounting in all to the sum of eight thousand seven hundred and forty-four dollars and thirty cents, together with the costs in this cause, to be taxed, and also the costs decreed in the district court, within ten days from this date; and that, in default thereof, the said libellants may have execution therefor against the said claimants, Perry Hannah, Albert T. Lay,
239 James Morgan, and William Morgan, and also against Harrison Ludington and Charles J. Kershaw, the stipulators of said claimants.

D DAVIS, *Circuit Judge.*

Appeal.

OCTOBER 8, 1868.—This day came the respondents by their counsel, Mr. Mariner, and pray an appeal to the Supreme Court of the United States from the final decree rendered in this cause as follows:

Circuit court of the United States for the district of Wisconsin.

SARAH S. WOLVERTON & JAMES E. PITMAN
vs.
THE PROPELLER ALLEGHENY, PERRY HANNAH, Albert Lay, James Morgan, and William Morgan, claimants, and Harrison Ludington and sureties, respondents. } In admiralty.

The above-named respondents, conceiving themselves aggrieved by the final sentence or decree entered in the above-entitled cause, pray an appeal to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and evidence, duly authenticated, may be sent to said Supreme Court.

E. MARINER,
Proctor for Respondents.

240 (Endorsed:) Oct. 8, 1868. Appeal allowed.
A. G. MILLER,
District Judge.

And presented the bond of Ephraim Mariner and Edwin H. Goodrich, in the penalty of eighteen thousand dollars, conditioned that the said appellants shall prosecute their said appeal to effect, and shall pay and discharge all such costs, damages, and expenses as shall be decreed against them; and said bond is as follows:

Appeal bond.

Know all men by these presents, that we, Ephraim Mariner and Edwin H. Goodrich, are held and firmly bound unto Sarah S. Wolverton and James E. Pitman, in the sum of eighteen thousand dollars, to be paid to the said Sarah S. Wolverton and James E. Pitman, their executors, administrators, and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents.

Sealed with our seals, and dated this 8th day of October, 1868.

Whereas Perry Hannah, Albert Lay, James Morgan, William Morgan, Harrison Ludington, and Charles J. Kershaw, have appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the seventh circuit, bearing
241 date September 28, 1868, in a cause in which said Sarah S. Wolverton and James E. Pitman were libellants, and the propeller Allegheny, Perry Hanna, Albert Lay, James Morgan, William Morgan, were claimants, and Harrison Ludington and Charles J. Kershaw, sureties, were respondents:

Now, therefore, the condition of the above obligation is such, that if the above-named appellants shall prosecute their said appeal to effect, and shall pay and discharge all such costs, damages, and expenses as shall be decreed against them, and shall stand to, and abide by, and

perform the final decree of said court in said cause, then this obligation shall be null and void, otherwise of force.

[L. S.] EPHRAIM MARINER.
[L. S.]
[L. S.] EDWIN H. GOODRICH.

DISTRICT OF WISCONSIN, *ss:*

Ephraim Mariner and Edwin H. Goodrich, being duly sworn, each for himself says that he is worth the sum of twenty thousand dollars and upward, over and above all debts, liabilities, and exemptions.

E. MARINER.
EDWIN H. GOODRICH.

Subscribed and sworn this 8th day of October, 1868, before me came.

(Endorsed as follows:) Oct. 8, 1868. I approve the within bond and the sureties.

A. G. MILLER,
District Judge.

242 Whereupon it is ordered that said appeal be allowed, and that execution be superseded and citation issued.

243 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of Sarah S. Wolverton et al. vs. Propeller Allegheny.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this thirtieth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

244 The United States of America, to Sarah S. Wolverton and James E. Pittman, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal in the circuit court of the United States of America for the district of Wisconsin, wherein the propeller Allegheny, her boiler, &c., Perry Hannah, Albert T. Lay, James Morgan, and William Morgan, claimants and respondents, and Harrison Ludington and Charles J. Kershaw, stipulators of said claimants, are appellants, and you are appellees, to show

cause, if any there be, why the decree passed against the said Perry Hannah, Albert T. Lay, James Morgan, William Morgan, Harrison Ludington, and Charles J. Kershaw, should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the 93rd.

[SEAL.]

A. G. MILLER,
District Judge.

We accept service of above citation this tenth day of October, 1868.

EMMONS & VAN DYKE,
Proctors for Libellants.

Supreme Court of the United States.

PERRY HANNAH, ALBERT T. LAY, JAMES MORGAN AND WILLIAM MORGAN, CLAIMANTS OF THE PROPELLER ALLEGHENY, &c., AND HARRISON LUDINGTON AND CHARLES J. KERSHAW, STIPULATORS, APPELLANTS,

vs.

SARAH S. WOLVERTON AND JAMES E. PITTMAN, APPELLEES.

BRIEF FOR APPELLEES.

N. J. EMMONS,
Counsel for Appellees.

N.
Michigan.
Straight Cut.
E.
Lake
S.

Supreme Court of the United States.

PERRY HANNAH, ALBERT T. LAY, JAMES MORGAN AND WILLIAM MORGAN, CLAIMANTS OF THE PROPELLER ALLEGHENY, &c., AND HARRISON LUDINGTON AND CHARLES J. KERSHAW, STIPULATORS, APPELLANTS,

vs.

SARAH S. WOLVERTON AND JAMES E. PITTMAN, APPELLEES.

BRIEF FOR APPELLEES.

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libel in this case was filed by the appellees, owners of the
r Henry C. Winslow, for damages sustained by a collis-
ween the vessel and the steam propeller Allegheny.
ter occurred on a mild, bright May day morning, in
own as the "straight cut," being the harbor entrance
ee river from lake Michigan. (The diagram on the
ge shows an outline of the locality of the accident.)
l was bound out, under tow of a tug; the steamer
at a high rate of speed, and as it appears, was
entrance with another steamer—the Maine, which
en the harbor piers just astern of her. The
lace near the inner or west end of the piers, the
ing the Winslow on her port side, cutting her
the keel and causing her to sink immediately.
ig was near the entrance from the river to the

straight cut, she saw the Allegheny then near the mouth or east end of the cut, and gave her the usual signal by whistle, to keep to the right. But it seems the Allegheny had lost control of herself: either her high rate of speed or shallow water, or both combined, causing her to steer very wildly; and before she begun to observe the most common-place precautions for such a thoroughfare, she had by her own heedless course rendered the collision inevitable.

His honor the District Judge decreed for the libellants. We append his opinion. There were two libels filed—one in the name of Goldsmith the owner of the cargo of the Winslow, and the present one. Both were heard together and upon the same testimony. His opinion is entitled in the Goldsmith case, in which no appeal was taken.

"DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF WISCONSIN.

IN ADMIRALTY.

BERNHARD GOLDSMITH,

v.

THE PROPELLER ALLEGHENY, PERRY HANNAH and others,

Claimants.

MILLER, JUDGE.

"Libellant shipped on board the Schooner Henry C a cargo of oats, at Milwaukee, to be carried to the falo. On the seventh day of May, 1864, the sch dock in the Milwaukee River, in tow of the ste Muir. It was broad daylight and clear, wind fr west. Shortly after leaving the dock, the capt seeing the propeller coming inside the piers, si one whistle to keep the starboard or right side, t in like cases; the propeller replied by a like sign

nalled a second time, when the propeller was about ten rods distant, which was replied as before; the propeller struck the schooner on her port cat-head, cutting her nearly to her keel, and running in board of the schooner, passed the windlass bitts, and smashed in her bows, so that she sunk within fifteen minutes.

The answer admits the signals from the tug by one whistle, to keep to the starboard side, the tug then being above the piers, which was answered by a like signal; the second signal when the propeller was about ten rods off is also admitted.

It is also admitted that the propeller and schooner collided between the harbor piers, and that the propeller struck the schooner, and cut into her, so that she sunk as charged in the libel.

It is also admitted in the answer, "that the propeller proceeded up about the centre line between the piers; that in proceeding so far to the starboard side of such channel, the propeller, drawing eleven feet two inches of water, dragged the bottom, so that she would not mind her helm; that the propeller proceeded up about the center line between the piers, gradually loosing her speed." The proof is that on account of her speed and draught of water, the propeller steered wildly, sheering from side to side, and not answering her helm.

The propeller Allegheny came up to the piers from the south, having run from Chicago at the rate of about ten or eleven miles an hour; and on a strife with the propeller Maine coming in from the north, she entered the piers ahead. The rate of speed of the Allegheny entering the piers was eight miles an hour. The piers are eleven hundred and fifty feet in length, extending east and west, and about two hundred and sixty feet apart. The length of the schooner was about one hundred and thirty-seven feet. The collision occurred about two lengths of the schooner, or about two hundred and thirty-four feet inside from the river.

There is the usual conflicting testimony in collision cases. Several persons who were on board the propeller as passengers and otherwise, in a set of stereotyped answers, testify that at the time of the collision she was nearer the north pier than the south. This is in contradiction of the answer and the other evidence. The answer states that the propeller kept in the cen-

ter between the piers; and the proof is that at the time of the collision her bow was fifty feet south of the center, heading south-west. It is satisfactorily shown that immediately before the collision the engines of the propeller were reversed.

It is not necessary to a correct decision of the question of fault, on the part of the propeller, to examine at length the volume of evidence submitted. The facts above stated from the pleadings show satisfactorily that the propeller was at fault.

The well-established rule, that a steam vessel entering a harbor is bound to observe the utmost vigilance to avoid collision with other vessels, was not observed by the propeller in the following particulars:

1 The propeller entered the harbor from the lake at too great speed. The rate of eight miles an hour is not allowable. A steam vessel entering between the piers from the lake, even on slackening her speed by shutting off steam when inside, may not be in condition to stop or reverse in time to avoid collisions with vessels under way out. "There being no usage as to an open way, the vigilance is thrown upon the entering vessel. Ordinary care under such circumstances will not excuse a steamer for a wrong done." The length of the piers is too short and the space between them too narrow to admit the ordinary maneuver of vessels in the open sea to avoid collisions. The collision occurred about nine hundred and thirty feet from the outer end of the piers. At the rate of eight miles an hour, the propeller would reach that point in less than one minute. If checked in speed one-half on her way up, she would reach that point in one minute and one-half. By running in at that rate, and a tug with a schooner in tow in full view meeting her, the propeller must take the responsibility.

2. The signal was given the propeller in due time to keep to the right side, which was answered in like manner. It then became the duty of the propeller to keep the right or north side of the center between the piers, which she did not; and at the moment of the collision her bow was about fifty feet south of the center, heading into the schooner.

3. When the propeller sheared, and did not answer her helm to the starboard, steered wildly and was unmanageable, it was

the duty of the master to stop her until the tug and schooner had passed. The propeller had full power to stop at any time, and to reverse. She did not stop in time to avoid the collision.

It is alleged that the tug was in fault for not keeping close to the south pier, and out of the way of the propeller. The tug was entitled to one-half the channel or space between the piers. The signals settled that matter between the propeller and the tug. The captain of the tug even on seeing that the propeller sheered, and did not answer her helm a starboard, would have risked collision at his expense by running the tug in reference to the course of the propeller, or to have steered towards the north pier. There was no obligation upon the tug so to manœuver at its own risk of condemnation in case of collision. The tug was on its own course, and had the right of it, exclusive of the propeller.

It is true that the tug was not in the range of a sailing vessel, requiring steamboats to keep out of the way. The tug had the character of a steam vessel, going out of port, on its own course, agreed upon with the propeller, which it was bound to keep.

The wind being from the south-west, although not very strong, yet striking the schooner on her starboard, it is not probable that she would be a starboard of the tug. It would require a quick movement on the part of the tug to bring the schooner into line at the point of entrance into the piers. The tug at the time of the collision was heading south-east, and could not have advanced much further on that course without running on the south pier. In this movement the tug was making way for the propeller.

In the answer it is stated, "that the master of the propeller saw the schooner descending the river in tow of a tug. He immediately caused the steam to be shut off entirely from the engine of the propeller, in order that the schooner might get between the harbor piers before he met her." And that when the schooner had got within five hundred feet of the propeller, the master of the propeller saw the vessels, if they proceeded at the speed at which they were going and upon the same courses, must meet in the bend of the river where it turns out of the old channel to come into the straight cut between the piers, gave

the order to the engineer to reverse the engines of the propeller, and that thereupon the engines were immediately reversed." The tug and schooner being in the bend of the river where it empties into the straight cut between the piers, the captain of the propeller knowing that to be a difficult point of navigation, particularly for a tug with a vessel in tow, and requiring an effort at that point on the "part of the tug to keep its tow in line, preferred meeting them inside the piers, where there was less danger of collision. Whatever fault there was consisted in the propeller running up too far. The tug was running at a rate of between three and four miles an hour, and if the propeller was then running at four miles an hour it is evident that a collision must occur before the propeller could assume a backward movement.

It was also argued that the tug was in fault for allowing the men on board the schooner to be setting sails coming down the river. It was a matter of duty and of necessity to prepare the vessel for navigation and protection before passing out into the open lake. In less than two minutes, if the collision had not occurred, the schooner would have been cast loose from the tug in the lake.

It was alleged that the master of the tug seeing the unmanageable condition of the propeller, in not answering her helm, should have stopped. If the tug could have stopped, what would have become of the schooner? She could not be stopped short of being turned completely around in the way of the propeller, and with greater certainty of collision.

From examination of the pleadings and evidence, my opinion is, that the propeller is in sole fault of the collision, and decree is ordered accordingly."

On appeal to the Circuit Court, the case was again fully heard before his honor Mr. Justice DAVIS, who affirmed the decree of the District Court, pronouncing the following opinion:

WOLVERTON & PITMAN, *against* THE PROPELLER ALLEGHENY.	IN ADMIRALTY. Circuit Court U. S. For Wisconsin.

"This case was also at the last term, argued with great ability and earnestness, but for want of time to consider it, was not decided. I have recently read the evidence and briefs with care, and examined the authorities referred to, and am prepared to announce the conclusion at which I have arrived.

The testimony is in a large degree, conflicting, and in many respects irreconcileable, but there are certain leading facts, established as I think, clearly by the evidence on which, in my opinion, the case turns.

The tug Muir left her dock in the harbor of Milwaukee about seven o'clock on the morning of the 4th of May, 1864, with the schooner Winslow in tow, for the purpose of towing her out into the lake. The propeller Allegheny was near the mouth of the straight cut making for the harbor, and being seen by the tug, was signalled to keep to the right, which signal was accepted. It is uncertain at what point in the river the tug sounded her first whistle, but it is not material, as the notice which the signal gave to the propeller was in proper time. The tug and tow proceeded down towards the lake and the propeller up the straight cut, until she struck the schooner in her port side, cutting down several feet below her water line so that she sunk within fifteen minutes. There can be no dispute that this collistion was inexcusable, for it occurred on a bright clear day, with nothing to obstruct the view of the approaching vessels, the peculiarities of the navigation well known, and the wind not unfavorable. The important subject of inquiry is to ascertain who is to blame for it. In order to do this, it is not only necessary to consider the conduct and conditions of the boats, but also, whether the passage up and down the river and cut, was beset with difficulties which all mariners, accustomed to the port, were presumed to know. The evidence shows, where the Milwaukee river empties into the straight cut, *is* a difficult point

of navigation, difficult for even ascending boats to get the right turn into the river, and requiring a tug towing a vessel out into the lake, to use care and skill, to get the vessel properly straightened up, between the pier. There is also near the inner end of the north pier shoal water, which causes heavily loaded vessels with large draughts, to sheer off, if they go too near it. In the view I take of this case, it is not necessary to determine the exact place where the collision took place. The evidence leaves it uncertain—it is strange that it is so, with so many persons witnessing it—but if not at the entrance of the piers, it was not far inside of them, and, at all events, the tow was not fairly straightened up in the cut when it happened. Did the captain of the propeller do all he could under the circumstances to avoid the collision? I think not. He knew he had to take the starboard side of the channel, and yet the answer says, he kept only as far over to the starboard as he was able and not go aground, and that in proceeding as far as he did to starboard his boat dragged the bottom, so that she would not mind her helm, and the evidence sustains the allegation of the answer that she would not mind her helm. Did not these considerations point out to the captain his clear line of duty? Having accepted the signal of the tug to go to the right of the channel, if for any cause, he found himself unable to do so, he should have waited, until the tug and tow passed. Pursuing the centre of the channel, was certainly not taking the starboard side of it, and going ahead at all after these warnings, was experimenting in the face of danger. Besides the tug had the right to full half the channel. The necessity for haste is not apparent, and it will be conceded that a good seaman should always act as if apprehensive of danger when meeting a tug and tow, in a place no wider than the straight cut of the Milwaukee river, and with similiar difficulties of navigation. It is said it was as much the duty of the tug to have stopped as it was of the propeller. I do not think so. The propeller could stop at any time and reverse, while the tug could not, without throwing the schooner around. If the critical point of navigation and the shoal water were equally known to both, yet the master of the propeller knew better than the master of the tug, the unmanageable condition of his boat and the

reasons for it. The tug could not know why the propeller was not under control, and had a right to presume that no boat liable to sheer because of too great draught of water, would venture the ascent of the cut with a tug and tow approaching, when a detention of two minutes at the farthest would relieve her of all trouble. The tug having signalled that she would keep to the south, it was her duty to do so, and if she had altered her course for any reason, she would have been properly chargeable in case of collision. As she could not stop without turning the schooner around, it was her duty to go ahead. The dangers of collision are greater in narrow rivers than in the open lake, because vessels, in times of peril, cannot be so readily manouvered in the rivers, and the interests of commerce imperatively require that all boats propelled by steam, in entering a harbor, should check down their speed so as to be under easy control. The Allegheny was in fault in not doing this. Some of the witnesses testify that four miles an hour is the usual rate of speed with which steam vessels enter the Milwaukee harbor, and that they can steer better while running at that rate, than if the speed is less or greater. It is certain the Allegheny entered the cut running much faster—how fast it was not easy to tell—but the speed was not less than six miles an hour, and probably higher. Whatever the exact rate of speed, it was too fast, as is proved by her bad sheering and inability to mind her helm. It would seem the master, in his hurry to reach her dock, did not appreciate the responsibility of his position, nor apprehend danger until it was too late.

If he misapprehended the speed of his boat or its effect before he entered the cut, as soon as he entered and saw she steered badly, it was his duty to have checked down to a point that would have enabled him to have readily stopped her, when he found difficuly in going to the starboard of the centre of the channel.

It is true the engines of the propeller were reversed before the collision, but it was then too late, for the movement did not succeed in stopping, in time, the headway of the boat. That the propeller was in considerable motion at the moment of collision, is demonstrated by the character of the injury the Winslow

suffered. The fault was in not doing sooner what was left undone, until the peril was imminent. I do not interpret the evidence so as to charge the tug or tow with fault. It is said they did not keep to the south of the channel, but the evidence, which has weight with me, proves the contrary.

It is proper to state, that I place slender reliance upon the testimony of the passengers on board the Allegheny, who swear she was nearer the north than the south pier, when the vessels collided. They mean to tell the truth, but I distrust very much their ability to judge of courses and distances on an element to which they are not accustomed; and this distrust is increased when I find they are contradicted by the weight of the remaining evidence in the cases. Besides there are too many of them who swear too nearly alike.

It is insisted the tug and tow could with safety to themselves, have gone further south. This may or may not be true, but if true, it was not a fault, for they left plenty of room to the north for any vessel that would mind her helm and would not sheer, and they were not required to go further south to accommodate a vessel in the predicament of the Allegheny.

The decree of the Court below is affirmed."

We are unaware of any complaint or allegation that misapplication has been made of the law to the facts. The case resolved itself wholly into a question of fact, and the propeller was found solely in the wrong. Both judges below having agreed in this conclusion, and having given us the benefit, in their opinions, of their reasonings, it is deemed unnecessary to attempt a further review of the evidence: at least until we hear alleged some affirmative error.

The Marcellus, 1 Bl., 414
The Water Witch, Ibid, 494.
The Potomac, 2 Ibid, 581.
Newell v. Norton, 3 Wall. 258.
The Grace Girdler, 7 Ibid, 196.

It is confidently submitted that the decree of the Circuit Court should be affirmed.

N. J. EMMONS,
Counsel for Appellees.